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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

"American's copy - Not corrected"

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RAY HARRYHAUSEN, :

Plaintiff, :

-against- :

AMERICAN TOBACCO COMPANY, a corporation, SARRA, INC., a corporation, FOOTE, CONE & BELDING, a corporation, VALENTINO SARRA, and JOHN FREESE, :

Defendants. :

- -x

488 Madison Avenue,
New York, N. Y.

April 12, 1957,
10:30 a. m.

EXAMINATION OF
RAY HARRYHAUSEN

BORAK REPORTING SERVICE
CERTIFIED SHORTHAND REPORTERS
154 NASSAU STREET
NEW YORK 38, N. Y.
WORTH 2 8057
NIGHT PHONE HUNTER 7-6474

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UNITED STATES DISTRICT COURT
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Defendants. :

- -x

EXAMINATION BEFORE TRIAL of RAY HARRYHAUSEN, the plaintiff, taken before Isadora S. Borak, C. S. R., Notary Public of the State of New York, at the office of Coudert Brothers, Esqs., 488 Madison Avenue, Borough of Manhattan, City, County and State of New York, on the 12th day of April, 1957, at 10:30 o'clock a. m., pursuant to notice dated March 11, 1957.

BORAK REPORTING SERVICE
154 Nassau Street
New York 38, N.Y.
- - -
WOrth 2-5058

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A P P E A R A N C E S:

RICHARD J. MACKEY, ESQ.,
Attorney for plaintiff,
20 Exchange Place,
New York, N. Y.

COUDERT BROTHERS, ESQS.,
Attorneys for defendants American Tobacco Company,
Foote, Cone & Belding, and John Freese,
488 Madison Avenue,
New York, N. Y.
BY: CARLETON G. ELDRIDGE, JR., ESQ.,
Of Counsel.

JOHN B. WHEELER, ESQ.,
Attorney for defendants Sarra, Inc. and Valentino Sarra,
39 Broadway,
New York, N. Y.

ALSO PRESENT:

JOHN FREESE
ROBERT JENNESS

- - - -

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto through their respective counsel that all objections except as to the form of the questions shall be reserved to the time of the trial;

IT IS FURTHER STIPULATED by and between the parties hereto through their respective counsel that sealing, certification and filing shall be and the same are hereby waived;

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IT IS FURTHER STIPULATED that the within examination may be signed before any Notary Public with the same force and effect as if signed and sworn to before a Judge of the United States District Court, except, however, if out of state, the notarial seal to be authenticated.

- - - -

MR. MACKEY: I want to thank you for permitting Mr. Harryhausen to witness the films at the American Tobacco Company yesterday, but I wanted to make a statement, in particular, in relation to the first film, known as THE WORLD'S FAIR FILM, which is marked Exhibit 1 for identification.

On March 6, 1957, in the course of the examination before trial of the American Tobacco Company by Mr. Boor, I witnessed what was designated as THE WORLD'S FAIR FILM, and I immediately made notes of what it showed, just notes in relation to the animated cigarettes, and so forth, and I prepared a written report and sent it to Mr. Harryhausen.

And in connection with that, at that time, I noted that two cartons came out at the beginning, and the covers opened on these cartons, and packages of

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cigarettes emerged from each carton and formed two lines in front of the carton from which they came forth like a military company formation. And on these packages that came out of the old-style green cover packages were the words "Lucky Strike" in a red circle, and that after they had formed this formation, they went back into the cartons, unopened, and the covers of the cartons closed.

Now, there was no marching and no dancing.

Now, yesterday, the film that was shown to us as a WORLD'S FAIR FILM, the cartons came out and then without any opening of the cartons, or bringing forth of any packages, suddenly a big group of cigarettes appeared, and these cigarettes marched forth in two lines from where the carton had disappeared.

Now, I mention that because maybe I am wrong, but that is entirely different from what I saw on March 6.

MR. ELDRIDGE: You are describing the opening?

MR. MACKEY: The opening, WORLD'S FAIR FILM.

MR. ELDRIDGE: The opening of the WORLD'S FAIR FILM?

MR. MACKEY: Yes, right in the beginning.

MR. ELDRIDGE: What particular part of the

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opening do you find contrary to what your recollection is of the content on the date we examined them together?

MR. MACKEY: The dissolution of this carton, and substitution of a group of cigarettes which formed together in a company, and marched forward away from where the carton had been, no sign of any package in which they were contained.

Now, when I saw it --

MR. ELDRIDGE: You don't recall seeing that?

MR. MACKEY: I don't recall seeing that when we were there on March 6. But I saw yesterday that these cigarettes had apparently been substituted in place of the packages which I saw emerging from the carton and forming two lines.

MR. ELDRIDGE: So that you will have the benefit of my notes, which were made at the same time, and I am quite certain nothing was changed in that film, it has been in the vaults of the American Tobacco Company since you and I last viewed it together, but I noted that the cigarette packages, we were told they were green colored packages, because the film was not in color, as I recall it. That the packs came out of the cartons, the packages actually marched in synchronization to music, and

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thereafter marching cigarettes, again with music, in synchronization, and then spelled out the title of the film, the story of Lucky Strike.

That was my brief notes on the opening.

MR. MACKEY: I don't recall, I didn't note the cigarettes at that time and there were no packages yesterday that came out of the cartons and marched along.

MR. ELDRIDGE: I am quite certain that nothing has been done to the film. Obviously, it has been locked in the vaults of the American Tobacco Company.

MR. MACKEY: So far as I can recall, we watched carefully, we saw it twice, it is different from your notes as well as mine.

MR. ELDRIDGE: Were you advised, and if so, by whom, as to the identity of the film you witnessed, that you call THE WORLD'S FAIR FILM?

MR. MACKEY: You mean yesterday?

MR. ELDRIDGE: Yes.

MR. MACKEY: Well, Mr. Boor was there.

MR. ELDRIDGE: Mr. Boor identified it?

MR. MACKEY: Yes.

MR. ELDRIDGE: He is the gentleman who identified it for us last time?

MR. MACKEY: Yes.

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MR. ELDRIDGE: I will ask him if there was any change in the film and check with him, in line with what your remarks are, after I receive the transcript.

However, I am quite certain that there have been no changes made in that film. It has been in existence since 1938. I don't know whether that particular print has been in existence since 1938, but the film itself.

MR. MACKEY: That is all I have to say.

R A Y H A R R Y H A U S E N, the plaintiff, having first been duly sworn by Isadora S. Borak, Notary Public, was examined and testified as follows:

DIRECT EXAMINATION BY MR. ELDRIDGE:

Q Will you please state your name.

A Ray Harryhausen.

Q Are you the plaintiff in this action?

A Yes, I am.

Q Where do you reside, Mr. Harryhausen?

A [DELETED]

Q Will you give me the address?

A [DELETED]

Q And how long have you resided there?

A I am a native of California.

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Q At this particular address.

A This particular address, about 18 years, I would say, 18 or 20 years.

Q And are you currently gainfully employed in California?

A Yes, I am.

Q And will you identify the name of your employer?

A My employer, the company?

Q Yes. By whom are you employed?

A Morningside Productions.

Q Where are they located?

A At 1483 North Gower Street.

Q And how long have you been employed by Morningside Productions?

A With Morningside Productions, about a year. I was employed with the same gentleman who is the head of that, for about three years.

Q Who is that?

A Charles Schneer.

Q Will you take me back over the years for a while and identify the entities with whom you have been employed in California in the picture business?

A Yes. Mutual Pictures --

Q And give me the approximate dates.

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A Do you want them in chronological order?

Q Yes, if you can.

A The first one was Argosy Pictures. That was around 1948.

Q Why don't you start with 1940? Were you in the picture business then?

A Yes, I was in the picture business in 1940. I was working for George Pal Productions. Then I went into the service.

Q Approximately when?

A Approximately 1942. And I was in the service until February, 1946.

Q And then did you become, following the service, gainfully employed in the picture business in California?

A Yes. Subsequently, at a subsequent date, I was in business for myself for a while and then I worked for Argosy Pictures.

Q What period were you working for yourself?

A Immediately after service.

Q Approximately?

A Approximately six months, six to eight months.

Q And were your offices located in California?

A Yes, sir.

Q And what type of work were you doing while you

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were self-employed?

A I guess you could call it educational films, and commercials.

Q What you would call industrial films, something like that?

A More or less commercials or industrial films.

Q Documentary type?

A The educational films were of a fairy-tale nature. This is all in the realm of animated film work.

Q All animation?

A Yes, three-dimensional.

Q Did you do any work for television during that time while you were self-employed?

A No.

Q Or for either industrial concerns' uses or for presentation houses?

A Yes.

Q Following the six or eight months that you were self-employed in California, immediately after that, by whom did you become employed?

A Argosy Pictures. It was in Culver City, I don't remember the address.

Q How long did you remain with them?

A I was with them for approximately a year, a year and

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a half, I guess it was.

Q Continuously employed by them for the year?

A Yes.

Q Were you on their payroll as an employee?

A Yes. Later on I was under contract.

Q That is, for the year following your six to eight months' self-employment?

A Yes.

Q And do you recall the date you went to work for Argosy?

A I was with them for a while, I guess you might call it under retainer, but actually we started production around 1947, I think it was, when I signed the contract, late December, but while I was working with them I also was doing commercials on my own, before that time.

Q Prior to December, 1947, and for what period of time were you doing commercials on your own time?

A For the period of time I was self-employed.

Q I understand about the six to eight months.

A That was involved in that period. This was an arrangement of what you would call a retainer. The pictures weren't definite that I was working on.

Q What do you mean when you say you were on retainer to Argosy during that period?

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A Well, I wasn't on a definite so many hours a day. I was doing more or less what I wanted, I had no definite hours.

Q You were performing work for them?

A Yes, I was, and also for myself.

Q And that retainer arrangement commenced when?

A That commenced in 1946, as far as I can recall.

Q In late 1946?

A Yes. While I was self-employed. The two were interwoven.

Q And then you say as of December, 1947, you commenced full-time work?

A Yes.

Q Under a specific employment agreement?

A Yes.

Q Is Argosy in any way related to ARKO?

A They were at that time but I think they are out of existence now.

Q I meant at that time.

A At that time, yes.

Q Was there a film organization by the name of ARKO Films?

A That was a company, yes.

Q Is Argosy and ARKO the same?

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A Actually, this company was ARKO.

Q That you worked for?

A That I worked for, yes.

Q Where does Argosy come in?

A Argosy was the head company and ARKO was the subsequent company.

MR. MACKEY: A subsidiary?

THE WITNESS: I don't quite know how it worked but there were two people, two different companies.

A (Continuing) Actually, it was ARKO. I started out with Argosy, but it was ARKO.

Q And you say that you did not commence picture work for ARKO until December of 1947, is that right?

A Actual production, yes, where I felt that I was confined, actual photography.

Q Was that at the end of December or the beginning?

A That was between the middle and the end of December.

Q What was the picture that you made, do you recall?

A Yes. It was called MIGHTY JOE YOUNG.

Q Did you receive a screen credit on that picture?

A Yes, I did.

Q As what?

A As first technician.

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Q I think you took us up to the commencement of work on MIGHTY JOE YOUNG, in late December of 1947. Following that, for how long a period did you remain in the employ of ARKO or its successor, as you say, Argosy?

A It was a full year, at least, from December to the following December, as I recall.

Q Was that the year that you were in production on MIGHTY JOE YOUNG?

A That was the year of 1948, as I recall it.

Q What did you do subsequent to that by way of gainful employment?

A After that I worked for a company called -- no, I worked for Jesse Laskey for a brief time on a film that was never completed.

Q In 1948?

A I think that was after, 1949. I had a respite between the two pictures.

Q I won't interrupt you. Just as you can best recall, will you continue with your chronology of gainful employment, giving us the dates and the employers?

A I don't recall the exact dates. Around 1950 I was employed by Mutual Pictures and after that by Clover Productions and then by Warner Brothers.

Q Will you give us the dates?

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A I don't recall the exact date of that. It was during the production called THE ANIMAL WORLD. It must have been in 1955. I believe it was early 1955. I am not certain of the date.

Q Have you completed your chronology of the dates?

A Then I went back to Clover Productions, and then to Morningside Productions.

Q Will you tell us when you went on retainer with ARKO in 1947?

A I can't recall the exact date at all. It was sometime in the middle of 1946 or late 1946. I am not certain.

Q You are certain that you commenced work on MIGHTY JOE YOUNG in December of 1947, late December?

A The actual production, as far as I can recall, yes.

Q What type of a picture was that?

A That was an animated combination of live action and animated film.

Q Sort of a KING KONG type of film?

A The type of KING KONG.

Q When did you first start doing any work at all on that picture?

A I would think around the middle of 1946, I am not certain of the date at all. I know I worked on my own

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films for a while, and then I sort of gradually worked into this other picture.

Q By your own films in 1947, you are again referring to these educational and industrial --

A That was in 1946.

Q That were your own films in 1947?

A A series called THE MOTHER GOOSE STORIES. But they were in 1946.

Q I was asking about films you were actually working on in the latter part of 1947, on your own, as opposed to work you were doing for ARKO.

A I didn't work, I don't believe I said I worked on my own films in 1947.

Q You did not do work on your own films in 1947?

A No. I put them aside for a while.

Q During the period you were on retainer for ARKO, do I understand it correctly that you were doing absolutely no work for that company in consideration of the retainer fee?

A Oh, no, I reported and did some sketching and various things and assistant to a gentleman named Willis O'Brien. It was assistance but it was preparatory work.

Q That was preparatory work on MIGHTY JOE YOUNG?

A Yes. The picture never completely went through to

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actual production, as I recall, until 1947.

Q Again, now you are referring to the late part of December, 1947, as the original date of production of the film?

A When it started. I am not certain of those dates because it has been a good many years ago and I never had a reason to keep track of them.

MR. WHEELER: Were you paid by the hour while you were on this retainer basis or did you have a specific job to do and you were being paid X number of dollars to do it in your own time?

THE WITNESS: No. I reported. I was there as much as I could be, but I wasn't bound in the sense that I could also work on my own material, which I did in the evening, and I often did on the weekends, and I also, when it was quiet and nothing was happening, and they didn't need my services, I worked on some of my own material.

MR. WHEELER: But they paid you a regular weekly salary?

THE WITNESS: It was a very minimal salary, yes.

Q Mr. Harryhausen, yesterday at the American Tobacco Company, you were permitted to view certain films, is that correct?

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A That is correct, yes.

Q In the company of your attorney?

A Yes.

(Discussion off the record)

MR. ELDRIDGE: It is conceded that yesterday afternoon Mr. Harryhausen with his attorney viewed all of the films that Mr. Mackey, Mr. Wheeler and myself and others viewed on March 6, 1957, at the American Tobacco Company, except that Mr. Mackey notes some discrepancies as previously indicated on the record, and he has no recollection of ever having seen HT320 yesterday. However, he doe[illegible] recall having seen the Herbert Tarryton film commercials.

BY MR. ELDRIDGE:

Q Mr. Harryhausen, how many times did you view each of the films which you witnessed yesterday?

A The over-all package of films were run once and the first two pictures were run a second time.

Q What were the first two pictures? Could you identify them by any title that was given to you?

A The first two films were THE WORLD'S FAIR FILM, and the SALESMAN'S MOVIE.

The second time, I may add -- was it the SALESMAN'S

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MOVIE that was run in part?

MR. MACKEY: No. The WORLD'S FAIR MOVIE.

A It was just the WORLD'S FAIR. I correct that. Just the WORLD'S FAIR that was run the second time.

MR. MACKEY: They ran the SALESMAN, too?

THE WITNESS: The second time?

MR. MACKEY: Yes.

THE WITNESS: Yes. They were both run the second time.

BY MR. ELDRIDGE:

Q Were any of the films that you witnessed yesterday, films that you had previously seen?

A Some of the later films I had seen.

Q Do you identify it from any notes you made or recollection, the films that you say you had seen prior to yesterday's screening?

A I had seen what you call, I had noted here as Reel 12, on television, many years ago.

MR. MACKEY: Old 29.

Q When had you first seen old 29?

A I don't recall the exact date.

Q Do you recall the year?

A It was on television whenever it was shown. It says here 1948.

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Q Does that refresh your recollection somewhat as to the year when you saw it?

A 1949, whenever it was released.

Q 1948 or 1949 is your best recollection as to when you first saw that film on television?

A Yes.

Q How about any of the other films you saw yesterday?

A The Hit Parade opening, I have seen, of course, on television.

Q Are you referring to the one designated the 1950 opening or are you referring to the one designated the 1956 opening?

A The one, whatever the one was that dances down the street.

Q That is the 1950. You recall, then, having seen prior to yesterday the Hit Parade opening, designated the 1950 one?

A Yes.

Q Do you recall when you first had occasion to see that?

A In 1954, 1955, somewhere around there.

Q That is your best recollection?

A I don't recall at all just when I saw it. I know I

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caught them whenever I saw a passing program on television.

Q I gather you don't view the Hit Parade with any degree of regularity?

A No.

Q Any of the other films you had seen prior to yesterday's screening?

A I really can't recall exactly the ones that were shown, at what time. But I remember a Tarryton package that I had seen very recently, three packages dancing to the rhythm of music, which I did not see yesterday.

Q Any others?

A I think I saw what you termed here as Reel No. 10.

Q Do you recall when you first had occasion to see that?

A I don't know when it was first released. We didn't have a television set until 1950, but I must have seen it --

Q At a friend's home?

A A friend's home or some place. I was told about 9 by some friends of mine.

Q When were you told about 9?

A I imagine in 1948, 1949, somewheres around there.

Q And you saw 10 during that same period at a friend's home?

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A I would imagine so.

Q That is your best recollection?

A Yes, my best recollection.

Q Any other films that you had seen prior to yesterday or you had heard of?

A Yes, I had seen the Conga, the drums, I remember seeing the drums. Which one contained the drums?

Q New number 27 with the packages appearing to dance on drums?

A Yes.

Q That would be new 27. Do you recall when you first had occasion to see that?

A No. I don't recall at all.

Q Can you give us an approximate year?

A This was new 27?

Q Do you recall that particular commercial employed the so-called tearing of the paper test?

A Yes.

Q And does that refresh your recollection as to when you first saw that film?

A No. I have no way of recapturing the dates.

Q Any other films you saw yesterday that you had seen prior thereto or heard about?

A I recall seeing what was termed the SALESMAN'S

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MOVIE.

Q Where and when did you have occasion to see that?

A If I remember correctly, it was in Mr. Freese's office.

Q When?

A About the latter part of 1946, I guess it would be. No, I beg your pardon. The latter part of 1945 or early 1946.

Q You didn't leave military service until 1946, February?

A That is correct. I was stationed here in New York.

Q Any other films?

A That is all that I can recall that I had seen before.

Q You did not attend the American Tobacco exhibit at the World's Fair in 1939, 1938?

A No. I wasn't there at all.

Q When, Mr. Harryhausen, did you first have occasion to meet the gentleman, John Freese?

A It was either in the latter part of 1945 or early 1946.

Q Where?

A At his office at Foote, Cone & Belding.

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Q In New York City?

A In New York City, yes.

Q And prior to that time, you had never had occasion to meet Mr. Freese?

A No.

Q Or communicate with him in any way?

A No.

Q When did you first have occasion, if ever, to meet a gentleman by the name of John Boor?

A As I recall, I never met John Boor until recently.

Q Until yesterday?

A Until yesterday.

Q When did you first ever have occasion to meet a gentleman by the name of Fritz Wilhelme?

A I do not recall ever meeting a gentleman by that name.

Q You don't know him by that name?

A No. I don't know him by that name at all.

Q I ask you the same question with respect to the following men: Emerson Foote.

A I never met Emerson Foote.

Q Bob Jenness.

A I met Bob Jenness, yes.

Q When for the first time?

A It was at George Pal Productions, in 1940, 1941, when

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I was working there.

Q You were working there?

A Yes. I stated that earlier.

Q Was he working there?

A Yes, he was.

Q The same type of work you were doing?

A Yes.

Q When, if ever, for the first time, did you meet a gentleman by the name of Jack Henderson?

A I don't recall ever meeting a gentleman by the name of Jack Henderson.

Q Mr. Valentino Sarra?

A I first met Mr. Sarra again in that same period, either latter 1945 or early 1946, during that period.

Q Where?

A At his studio.

Q Prior to the date of meeting him, had you had any previous oral or written communications with him?

A No.

Q Cullen Landis, when did you first meet a gentleman by that name?

A Around the same time, end of 1945 or early 1946.

Q Where?

A At the Valentino Sarra Organization.

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Q In New York?

A In New York.

Q And that is also true of Mr. Valentino Sarra? It was in New York City?

A Yes.

Q How about George Pal?

A I met him in 1939 or 1940, I believe, when I started to work for him.

Q You met him when you first went to work for him?

A When I first went to work for him, yes, which I believe was in 1940.

Q A gentleman by the name of Steve Czuphin?

A I can't recall ever meeting a man by that name.

Q George Hill, Jr.?

A I don't recall ever meeting George Hill, Jr.

Q Elwood Whitney?

A No.

Q George Gorman?

A No.

Q Prior to January 1 of 1948, whom did you know in the employ of American Tobacco Company?

A Prior to 1948?

Q January 1, in their employ at that time.

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A John Freese. That is the only one that I can recall. Oh, in the American Tobacco Company or Foote, Cone & Belding?

Q American Tobacco.

A I never knew anyone else at American Tobacco.

Q The same question with regard to Foote, Cone & Belding.

A Mr. John Freese.

Q Mr. John Freese is the only one?

A Yes.

Q Batten, Barton, Durstine & Osborn, the same date, advertising agency?

A Yes.

Q Who?

A I don't recall exactly who I met there. I know I met a number of people. I remember meeting a Mr. Olds.

Q Anyone else?

A That is the only name I can recall at the moment.

Q The same date, Sarra, Inc., prior to January 1, 1948?

A What is the question?

Q Whom did you know in the employ of that organization prior to January 1, 1948?

A Prior?

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Q To January 1, 1948.

A Mr. Landis, and Mr. Sarra.

Q Anyone else?

A That is all that I can recall.

Q The same question with respect to an advertising agency called Lord & Thomas.

A I don't recall ever visiting the Lord & Thomas Advertising Agency.

Q The same question with respect to Electra Films.

A I don't recall an Electra Films.

Q Same question with respect to N. W. Ayer Advertising Agency.

A I am not certain whether I met them at all.

Q You have no recollection?

A I have no recollection.

Q The same question with respect to another advertising agency, M. H. Hackett Company.

A As far as I know, I never contacted anybody there at Hackett.

Q The same question, the same date, prior to January 1, 1948, whom did you know in the employ of the Jam Handy organization?

A No one that I recall.

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Q When I asked you about George Gorman, I mistakenly called him George. His first name is Pat. Does that make any difference to you, as to whether you knew him?

A No.

Q In September or October and November of 1947, when you were working on a retainer for ARKO, did you have any kind of a written agreement with ARKO?

A What period was that?

Q September, October and November of 1947.

A No, I don't believe I did.

Q Were you paid by ARKO?

A Yes. As I recall, I am not certain of that.

Q By the way, when did you complete production on MIGHTY JOE YOUNG?

A It seems to me the end of 1948, as far as I can recall.

Q Were you in New York City at any time during the period that you were on retainer, and subsequently in production, on MIGHTY JOE YOUNG?

A No.

Q During the period while you were on retainer, and during the period you went into actual production on MIGHTY JOE YOUNG, you were not doing any other work

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at that time?

A Will you repeat the question?

(The question was read)

A No. I was doing some work on my own.

Q What was the answer?

A I was doing some work of my own at that time, which I believe I stated earlier.

Q During the time you were actually in production on MIGHTY JOE YOUNG?

A No. Not in production. Prior. You spoke about the retainer.

Q The retainer, as I recall, you said ran from approximately September, 1947, until late December?

A No. It was in 1946.

Q 1946. What work were you doing for yourself, --

A I was working on --

Q (Continuing) -- during the period September, 1947, up to the time you actually went into production on MIGHTY JOE YOUNG?

A It seems to me I was -- I was working on MIGHTY JOE YOUNG at that time.

Q You were working on that exclusively, were you not?

A Yes.

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at that time?

A Will you repeat the question?

(The question was read)

A No. I was doing some work on my own.

Q What was the answer?

A I was doing some work of my own at that time, which I believe I stated earlier.

Q During the time you were actually in production on MIGHTY JOE YOUNG?

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Q (Continuing) -- during the period September, 1947, up to the time you actually went into production on MIGHTY JOE YOUNG?

A It seems to me I was -- I was working on MIGHTY JOE YOUNG at that time.

Q You were working on that exclusively, were you not?

A Yes.

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Q In that period?

A In September.

Q September of 1947, up to late December of 1947, when you actually went into production on that, as you say, you were working exclusively on that film, were you not, for ARKO?

A No, not at that time. It must have been in 1948.

Q Then answer the question that I put. What films were you working on other than MIGHTY JOE YOUNG during the period September, 1947, up to late December, 1947, when you say you went into production on MIGHTY JOE YOUNG?

A Working on my educational films.

Q Can you recall any specific ones you were working on?

A I also worked on a film for the Hollywood Race Track, a short.

Q Do you remember the title of it?

A I don't remember the title of it at all. It involved the animation of a doll.

Q Anything else?

A No. Those were the two things that I was working on at that time.

Q How much time during the period September, 1947,

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until the time you say you went into actual production on MIGHTY JOE YOUNG, did you spend on this Hollywood Race Track film, do you recall?

A No, I don't recall exactly. It was a very simple job.

Q A week?

A Two weeks, possibly.

Q So exclusive of the two weeks in that period, can you place those two weeks, whether they were in September or October?

A No, I have no idea.

Q Exclusive of those two weeks, you were working exclusively on MIGHTY JOE YOUNG during the period September, 1947, up to the date you say you went into actual production on MIGHTY JOE YOUNG, isn't that correct?

A No, it is not correct.

Q What other work were you doing?

A I don't quite understand your question.

MR. ELDRIDGE: Read it, please.

(The record was read)

A None other than the Hollywood Race Track film and MIGHTY JOE YOUNG, isn't that right?

MR. MACKEY: He said educational films.

A The educational films went partially into that period.

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Q Tell me what educational film, if we can call Hollywood Race Track an educational film, what other, as you give the date, in December, 1947?

A That was the only one.

Q Were there any other films, other than the Hollywood Race Track, you actually worked on during that period, other than MIGHTY JOE YOUNG?

A Not that I recall.

Q Not that you recall?

A No.

Q When I asked you whether you were devoting your exclusive time during that period, except for the two weeks you worked on the Hollywood Race Track film, to MIGHTY JOE YOUNG, I was correct, wasn't I?

A Yes.

Q By the way, for how long a period were you stationed while you were in the military service in New York City, prior to January 1, 1946?

A It is difficult to determine. I would say approximately three months.

Q So when you referred to late 1945, or early 1946, in answering some of these previous questions, you meant the last three months of 1945 or the first few months of 1946, is that correct?

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A That is correct, yes.

Q Were you engaged in any occupation other than rendering military service until the date you were released therefrom?

A No, I was not.

Q During 1945, did you have any business representative of yourself located in New York?

A In 1945?

Q Yes.

A No.

Q In 1946?

A In 1946, yes.

Q When did you retain this business representative?

A I imagine it would be the first few months, within that period, early 1946.

Q In other words, right after you left military service in February?

A Yes. Within that time. I have no way of recalling the specific date.

Q In other words, some date after February when you were released from the military service, in 1946?

A That is correct.

Q What was the name of this representative?

A The name was Charlotte Knight.

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Q Where does she reside?

A She resides at -- I will have to look it up. She now resides at [DELETED]

Q Do you know where she resided in 1946, when you retained her?

A As far as I can recall, it was [DELETED]

Q Did she maintain a place of business in 1946, when you retained her?

A No, she did not. We were just starting out together at this time. There was no definite establishment.

Q Did you have any written agreement with her at that time, when you started out?

A No, I did not.

Q Have you ever had a written agreement with her?

A No.

Q What was the nature of her business relationship with you?

A She was, I decided to go back to the West Coast after I got out of the army, and she was to represent my films on the East Coast.

Q That is films you made yourself?

A Films that I had made, samples that I had made earlier.

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Q In other words, she was to act more or less as your sales representative?

A On the East Coast, yes.

Q On a commission basis?

A On a commission basis. It was a gentlemen's agreement, so to speak.

Q What was the commission she was to receive on sales of your films?

A Well, we had various arrangements. I think it was 15 per cent as far as I can recall.

Q Does she still represent you in respect to any films?

A No, she does not.

Q When did that relationship discontinue?

A That discontinued approximately in 1948.

Q And it was continuous from the date when it commenced, which was some date after February, 1946, up through 1948 or to 1948?

A Yes, I would say it was continuous.

Q Through or to 1948?

A To 1948. As long as she was on the East Coast, why, if anything came up, I had an arrangement with her to act as my representative. As far as I can determine, it was about the middle of 1948 when we -- I can't recall

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any definite breaking off, as you put it.

Q Well, the relationship, of her working for you as a commission agent, terminated at some point?

A Yes.

Q You say that your best recollection is that it was the middle of 1948?

A 1948 or 1949, yes.

Q Did that coincide with her transfer to the Coast?

A No. Her transfer to the Coast took place much later, as far as I can recall. She came to the West Coast in 1955 or 1956, as I recall.

Q Paragraph 2 of your complaint, Mr. Harryhausen, --

MR. ELDRIDGE: Will you show Mr. Harryhausen a copy of that --

A Yes.

Q You refer to the fact that you were and now are the owner of a certain literary property. Can you identify the certain literary property which you refer to there?

A Yes. It was an experimental commercial film that involved the use of a Lucky Strike package in animation. Is that complete enough?

MR. ELDRIDGE: Mr. Mackey, perhaps I can address

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this to you, to save some time.

Plaintiff's Exhibit 3-A for identification, can it be conceded that that is a print of the complaint reference, i.e., that certain literary property?

MR. MACKEY: Yes, that is the film.

THE WITNESS: Yes. That is an exact duplicate of the original which I believe is labeled 3-A, is it? Plaintiff's Exhibit 3-A?

MR. ELDRIDGE: Yes. Plaintiff's Exhibit 3-A for identification.

MR. MACKEY: On March 6.

BY MR. ELDRIDGE:

Q By the way, have you screened the particular print, Plaintiff's Exhibit 3-A for identification, yourself?

A No.

Q You have never seen it?

A Oh, yes.

Q That particular print?

A Yes, I have seen that particular print.

Q That is a print that you sent to Mr. Mackey, that is a true and correct print?

A Yes.

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Q Of what you referred to in your complaint as certain literary property?

A That is correct. That is a true print.

Q Is that a finished and completed film in the form that the print is, which you sent to Mr. Mackey?

A I don't quite understand what you mean. You mean is it the negative, so to speak?

Q I mean is the film, Plaintiff's Exhibit 3-A for identification, a completed and finished product, as far as its being a print.

A Yes.

Q Did you ever register Plaintiff's Exhibit 3-A for identification or print for statutory copyright?

A No.

Q Any of the prints?

MR. MACKEY: You mean duplicates?

A Duplicates of that particular film?

Q You never registered that work, if I may use the word, for statutory copyright?

A No, I never registered that work for statutory copyright.

Q How many prints have been made of what I will refer to, if I may, as Plaintiff's Exhibit 3-A for identification, realizing that that is merely a print itself

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of the work which you call a certain literary property, and I am now asking you how many prints were made of Plaintiff's Exhibit 3-A for identification?

A At what time? Any specific time?

Q Say ever, first.

A I will have to go back to when it was first created. There was one print made from the original at that time.

Q When was that?

A That was in 1945, early. The middle of 1945. And then I recently had another print made because the print was shrunken, which I sent to Mr. Mackey.

Q That is two prints?

A Two prints. That was made in 19 -- well, 1956, I believe it was. The last part of 1956.

Q And that is the complete number of prints that have been made of Plaintiff's Exhibit 3-A for identification?

A Yes.

Q Where were they printed?

A They were printed at Tele Film, if I recall.

Q Both of them?

A No. The second one was printed at, the one in 1956, was printed at Color Reproduction.

Q Can you give me the addresses of both of those

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places?

A Tele Film is on Sunset Boulevard, that was the first print. That is where I recorded the music. And Color Reproduction is on Santa Monica Boulevard, near Fairfax. I do not know the exact address.

Q Do you still have the original negative of Plaintiff's Exhibit 3-A for identification?

A Yes, I do.

Q Where is that stored?

A That is stored in my home.

Q Is that the negative from which you made the 1956 print?

A Yes, it is.

MR. ELDRIDGE: Will it be agreed, Mr. Mackey, that Mr. Harryhausen, at the time of trial, will produce the original negative of Plaintiff's Exhibit 3-A for identification?

MR. MACKEY: Oh, yes.

THE WITNESS: You can't run the original negative.

MR. ELDRIDGE: No. I would like to have it for examination.

THE WITNESS: Yes.

MR. ELDRIDGE: Might I suggest at least one

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week prior to actual trial to permit examination of the original negative?

MR. MACKEY: Yes. There will be no objection to that.

THE WITNESS: No objection.

BY MR. ELDRIDGE:

Q Has Plaintiff's Exhibit 3-A for identification ever been sold to any person or entity?

A No, it has not.

Q Licensed to any person or entity?

A No, it has not.

Q Rented to any person or entity?

A No.

Q Rights in the film ever assigned to any person or entity?

A No, they have not.

Q Has the film ever been exhibited to the general public, to your knowledge?

A To the general public?

Q Yes.

A No.

Q Has it ever been exhibited on television?

A Not that I recall. You mean publicly or on a closed circuit?

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Q Either way.

A I believe it may have been in 1948, on a closed circuit, but I am not certain of that.

Q And what were the circumstances surrounding the closed circuit, sir?

A I recall Miss Knight telling me that it would run on a closed circuit, a demonstration, in which she was representing me.

Q When was that, did you say?

A I think it was in 1948. I would have to check with her.

Q Do you remember for whose benefit the closed circuit telecast was made?

A No, I do not.

Q You can't identify any of the people who would have witnessed the closed circuit exhibition?

A No. It was on the West Coast and that was, Miss Knight was in on that showing, and I have no way of recalling what she told me at that time.

Q You made no notes or memoranda relating to that closed circuit exhibition?

A No, not that I recall.

Q You never made an examination to determine whether you did or did not?

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A No, I have not.

Q Will you do that, prior to executing your examination, look through your records to see whether or not you do have some information relating to the closed circuit exhibition, and if so, indicate the identity of the people or entities for whom the telecast was made?

A If it is possible to get that information.

MR. ELDRIDGE: That is agreeable to you, is it not, Mr. Mackey?

MR. MACKEY: Agreeable to me.

Q When did you start work on Plaintiff's Exhibit 3-A for identification?

MR. MACKEY: You mean the original?

MR. ELDRIDGE: When I refer to Plaintiff's Exhibit 3-A for identification, I do not refer to the 1956 print, which it actually is.

MR. MACKEY: That is what I wanted to know.

MR. ELDRIDGE: As a means of short-cutting it, or I will refer to it as the Harryhausen film, if you prefer, but it has an identification number.

Q I will continue, if that is agreeable to you, Mr. Harryhausen, to refer to Plaintiff's Exhibit 3-A for identification as the work, and unless I indicate to the

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contrary, I will be referring to the work itself, rather than the 1956 print of it.

A Yes.

Q And if I specifically intend to refer, hereafter, to the 1956 print, I will indicate so.

A Yes.

Q All right?

A Yes. Always in relation to the original, yes.

Q When did you commence work on Plaintiff's Exhibit 3-A for identification?

A I believe that was in the middle of 1945.

Q Where?

A At a studio in my home, at the time.

Q At a studio in your home?

A Yes.

Q Where were you living at that time?

A The same address, [DELETED]

Q And what did you first do, by way of work, on Plaintiff's Exhibit 3-A for identification?

A What did I first do?

Q Yes.

A I don't quite understand.

Q You commenced to work on a project which ended up being Plaintiff's Exhibit 3-A for identification?

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A That is correct.

Q What did you first do with respect to that project?

A First I created an idea, and then put it on paper and executed it.

Q What is the idea that you created?

A I would like to go into an explanation if you don't mind.

Q You said you created an idea?

A Yes.

Q I am asking you to tell me what is the idea you say you created.

A I wanted to put a personality into inanimate packages, specifically, a cigarette package. Television was just beginning to grow at that time, and I felt animating a package, giving it a personality, would be of great sales value in that medium. So I made an experimental film.

Q What do you mean by an experimental film?

A I guess you would call it an experimental film because it wasn't sponsored by anyone. It wasn't made on a specific commission, so I refer to it as an experimental film.

Q After you had this idea of putting personality

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into an inanimate package, specifically, a cigarette package, what did you next do?

A I chose a piece of music that I could synchronize what I had in mind, and then I developed the idea more completely in the form of a story board and then executed it on film.

Q What music did you choose?

A I chose a selection from OKLAHOMA.

Q What selection?

A SURREY WITH THE FRINGE ON TOP.

Q Are you familiar with the term as used in the motion picture industry as "sync" rights?

A As what?

Q "Sync" rights.

A I am familiar with the term synchronization.

Q Are you familiar with synchronization rights in music?

A Synchronization rights?

Q In music?

A No.

Q Never heard of it?

A No.

Q Did you get permission from anyone to synchronize the music, SURREY WITH THE FRINGE, in that Plaintiff's

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Exhibit 3-A for identification?

A No. It was an experimental film at the time.

MR. ELDRIDGE: I move to strike the last part of the answer as not being responsive.

THE WITNESS: What was that?

MR. ELDRIDGE: I moved to strike the last part of your answer as not responsive. That doesn't concern you. That is a legal motion that is made with respect to part of your answer that I deem is not fully responsive to my question. My motion will be ruled upon at the trial.

THE WITNESS: I don't understand that.

MR. MACKEY: It refers to that part of your answer where you said, "Because it was an experimental film."

THE WITNESS: Yes.

MR. MACKEY: You didn't get permission because it was experimental. He wants to strike out "Because it was an experimental film," because it was not responsive.

All you have to say to answer his question is you didn't get permission, and stop.

BY MR. ELDRIDGE:

Q Who worked with you in connection with the

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creation of the story boards for Plaintiff's Exhibit 3-A for identification?

A No one worked with me. I did it all myself.

Q All independent work?

A Yes.

Q Who directed the execution of that story board and film?

A I directed the execution.

Q Who financed the film?

A I financed it myself.

Q What did it cost?

A I don't recall.

Q Have you an idea?

A No. I would have to look that up.

Q What is that?

A I didn't have any records at the time of that, so I have no idea of how I could judge what it cost.

Q Excluding your time in connection with the production of the film, can you give us an approximate figure of the cost of Plaintiff's Exhibit 3-A for identification?

A Well, excluding my time, it involved the cost of film, the cost of recording. Those are the two main items.

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Q What would they have run on your film, approximately?

A I have no idea what they would have run at that time.

Q Were you the producer of the film?

A Yes, I was.

Q Who filmed it?

A Who photographed it?

Q Who was the camera man?

A I photographed it.

Q You say it was an animated film?

A It was a stop-motion film, to be more specific. Animation usually refers to drawing animation.

Q This was a film made in what you call stop-motion photography technique?

A That is correct.

Q Did anyone assist you during the course of the filming of the Plaintiff's Exhibit 3-A for identification?

A No.

Q The film does not have an audio sound track other than for the music, does it?

A No, it does not.

Q Who was present during the actual filming of Plaintiff's Exhibit 3-A for identification?

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A My parents, as I recall, were about the only ones who were present.

Q What was your purpose in making the film?

A The purpose of making the film was that I knew television was just beginning to show some signs of life. I had seen a little of it, and I had heard a number of radio commercials that were very bombastic at that time. Everyone was talking about the bombastic quality of radio commercials, and I felt in this new medium of television it would make a very interesting way of presenting a product, giving it a lifelike quality, which would aid enormously in selling that particular product.

Q In other words, you intended to use it in an effort to sell yourself as a stop-motion photographer?

A No, not to sell myself as a stop-motion photographer. I wanted to sell an idea. In fact, I had no definite plans at that time. I made it mainly as an experimental film. I had no plans, immediate plans, of disposing of it.

Q Did you consider Plaintiff's Exhibit 3-A for identification in print form as a finished product for commercial exhibition on television?

A At that time, yes.

Q For whom?

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A Did I what?

MR. ELDRIDGE: Will you repeat that question.

A For whom? I misunderstood your question.

Q I said for whom.

A I mean the previous question.

MR. ELDRIDGE: Read it back, please.

(The record was read)

A I wish you would reword that question.

MR. MACKEY: I object to that. He didn't say he considered it for anybody.

A I didn't make it for anyone. I stated that before. I made it mainly as an experimental film.

Q I asked you whether you considered the finished product for exhibition on television. You said yes.

A At that time, yes.

Q And I asked you for whom. Any particular person or entity you had in mind?

A Not at that time, no.

Q What did it represent? More or less a sample of your talents in that field?

A It represented to me the putting into a concrete form an idea that I had of selling the product, and to my knowledge, at that time, I knew of no other film of that nature.

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Q When you say you knew of no other film of that nature, do you mean that you had no knowledge of any films that prior thereto had employed the stop-motion technique of photographywith respect to movement of three-dimensional objects?

A Not to the movement of three-dimensional objects, but in using the actual product, developing a personality in it, by means of displaying that product on television.

Q Did you consult with the American Tobacco Company, or with any representative of theirs, prior to making Plaintiff's Exhibit 3-A for identification?

A No, I did not.

Q You received no permission to use their product in any form?

A No.

Q Have you retained a copy of your original story board for Plaintiff's Exhibit 3-A for identification?

A Mr. Mackey has a copy.

MR. MACKEY: I think it was marked for identification.

MR. ELDRIDGE: May I see it?

MR. MACKEY: - I haven't got it here. We marked it for identification.

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MR. ELDRIDGE: I know. I asked you if you would bring whatever documents we had heretofore marked for the purpose of examining this witness, and any other you believe I might call for in the course of this examination.

MR. MACKEY: I didn't think of bringing that; I thought you wanted me to ask him to bring whatever he had out on the Coast. I have no objection to bringing that.

MR. ELDRIDGE: I fully realize it had been marked for identification.

BY MR. ELDRIDGE:

Q You have seen the story board which Mr. Mackey has, have you not?

A Yes, I have.

Q By that we refer to Plaintiff's Exhibits 1-A, B and C?

A Three pages of the sketches that I sent to you.

Q Was that the story board in its original form?

A Yes, it was.

Q Was it ever altered or modified prior to executing the story board in photography?

A Was it ever modified prior to executing?

Q Prior to the photographic execution of the

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story board was it ever modified from the form in which it currently is, Plaintiff's Exhibits 1-A, B and C?

A No.

Q You made a single story board and then did the photographic work?

A No. Before the film developed, I made two or three story boards. But this was the final one. The others I never found. I must have disposed of them at that time. But this was based on what the film, the final product, was. This was a guide for my final product, that I photographed.

Q Plaintiff's Exhibit 3-A for identification is 16 mm. color film, is it not?

A That is correct.

Q Are you familiar with the running time of the film?

A I would say approximately two and a half minutes.

Q The room appears as the film commences. Is that shot in your own home?

A Yes, it was at the time.

Q It was your living room?

A It was my living room.

Q Is that what you refer to as your studio?

A No.

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Q You say you had seen television prior to commencing work on this film. Had you seen any film commercials?

A No, I had not.

Q Of any kind?

A Not that I recall.

Q In other words, the television that you saw prior to commencing work on your project, Plaintiff's Exhibit 3-A for identification, did not have any commercial announcements on them?

A I was not a regular viewer. The only television I saw was if I passed a department store or some place where it was shown publicly. I don't recall specifically where I saw it.

Q Were you familiar with the time period allotted for film commercials at that time?

A At that time I don't think there was any specific --

Q That was your information?

A That was my information at the time. I assumed it was around two and a half to three minutes.

Q Did you receive any information upon which you based that assumption?

A I can't say any definite source at the moment, no.

Q Can you give us a definition of what stop-motion

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photography is? Will you define the term for us?

A Yes. You could call it putting into motion inanimate objects. That is as far as I can go.

Q Will you define the term animation?

A Animation refers to specifically cartoon animation where a series of drawings are employed.

Q Stop-motion is actually a type of animation, is it not?

A Stop-motion would be a type of animation, yes.

Q Is it common to refer to stop-motion photography as one turn one picture movement?

A It has been referred to as single-frame stop-motion, stop and go, various terminology.

Q Mr. Harryhausen, I am going to show you an excerpt, a page from a book that I have here which is Talbot, entitled "Motion Pictures," and I ask you if you would read the marked portion of this book to yourself, and tell me if that is an accurate description of the concept employed in stop-motion photography. It is the entirety of page 236, with the exception of the last line.

(Witness examines book)

A Yes, that is essentially the basic definition of stop-motion.

Q And the concepts that are employed in stop-motion

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photography?

A Yes, that is one phase of it that they describe there.

MR. MACKEY: May I ask who publishes that?

MR. ELDRIDGE: Yes.

Note for the record that the book is entitled "Moving Pictures," subtitled "How they are made and work," by Frederick A. Talbot. First printed in England January, 1912.

We will stop for lunch.

(Whereupon, there was a luncheon recess.)

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AFTERNOON SESSION

2:00 P.M.

R A Y H A R R Y H A U S E N, resumed the stand, having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION CONTINUED

BY MR. ELDRIDGE:

Q Mr. Harryhausen, do you know when and where the technique of stop motion photography was first developed?

A Where or when?

Q And when.

A It dates back into the silent days, I imagine. The early stages of motion pictures.

Q Which would be approximately when?

A 1885 I imagine.

Q And do you know where it was developed and by whom?

A Not exactly, no. It may have been France, in France some gentlemen were experimenting.

Q There are many people here in this country who do stop motion photography work, are there not?

A Over the past few years, yes.

Q What do you include in the past few years?

A The new organizations that have sprung up since the

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advent of television.

Q Going back to 1945 through 1948, who were some of the people here in this country who were better knon in the field of stop motion photography?

A I can't name anybody specifically. I don't recall at that time. George Pal Productions.

Q I was thinking of individuals. That would be George Pal?

A George Pal, yes.

Q And yourself?

A Myself.

Q Bob Jenness?

A Bob Jenness. Willis O'Brien.

Q Mark Sloane?

A I don't know Mark Sloane.

Q Jack Norden?

A I don't know Jack Norden.

Q Any others you can think of?

A No.

Q All of those men were qualified, well qualified, that you named, including yourself, to do stop motion photography?

A Yes.

Q Prior to say 1947, Mr. Harryhausen, what

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subjects have you seen treated in this photography technique?

A What subject matter?

Q Yes. For example, boxes?

A I haven't seen any packages to speak of, or boxes. I have seen animated figures such as the Lost World and King Kong and the Puppetunes. That is about all I can name.

Q You have never seen this photographic technique employed with rectangles, sqaures and cylinders and so forth?

A No.

Q Have you ever heard of it?

A What exactly is it?

Q What?

A What exactly is it, the technique of rectangles?

Q The photographic technique i.e., stop motion photography, utilizing rectangles, squares, cylinders, making them appear by that technique as if they were in motion?

A No. I can't recall ever seeing that.

Q Did you ever hear or see any films that George Pal had made abroad?

A I think I saw two of them.

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Q What were they?

A One was a Hawaiian name and one was something about a broadcast. I don't remember the details of it.

Q And in neither of the films that you saw did he employ any three-dimensional squares, rectangles or cylinders?

A Not that I recall.

Q Did you ever hear of any cigarette films he made abroad?

A No.

Q Of course you never saw them?

A No.

Q Would you tell me then again the only subjects that you had seen employed or utilized in this photographic technique prior to 1947?

A Those are the only subjects.

Q Just tell me again which subjects?

A KING KONG, THE LOST WORLD.

Q Was that an animation of the animal?

A Animation of animals, that type of thing, yes, which employed stop motion technique principles.

Q As opposed to drawing animation?

A As opposed to drawing.

Q Prior to 1947 you had only seen animals

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utilized?

A Animals and puppets. We did Pal's PUPPETUNES, which were short subjects and cartoons.

Q You never heard of any commercial films utilizing stop motion techniques prior to 1947?

A No, not that I recall.

Q What is your definition of a commercial film?

A Definition of commercial film would be the type of film designed specifically to sell a product.

Q Would you consider the WORLD'S FAIR MOVIE and SALESMAN'S MOVIE that you saw yesterday commercial films?

A Yes. Or industrial films, I would label it more as an industrial film.

Q What is the difference between an industrial film and a commercial film?

A Well, the industrial film would involve more details, I would imagine, of the technicalities of the industry, made specifically for industrial people, rather than for amusement or entertainment of the public.

A A commercial film is usually designed for public consumption, is it not?

A Yes, that is correct.

Q And the WORLD'S FAIR FILM would fit into the category of the commercial film, would it not?

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A Yes.

Q As would the Salesman's Movie that you saw yesterday?

A That would seem more like an industrial film to me.

Q Do you know the purpose for which that film was made, the Salesman's Movie?

A No.

Q Are you familiar with the use it was put to?

A Not completely. I read that it was a Salesman's Movie, and that is about all I got.

Q That it was exposed primarily to the general public at retail outlets or stores that sold American Tobacco products?

A I never knew that.

Q If you knew that as a fact, you would certainly classify it as a commercial film?

A The title would not suggest that to me. You could call it that.

Q What is the title?

A We call it the Salesman's Film.

Q Because of the title you are assuming it is merely exhibited to salesmen?

A That is what I would assume. I don't know what the

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details of the exhibition would be.

Q If you were told that it was used for public exhibition to the general public, in retail outlets, that carried American Tobacco products, you would then tend to classify it as a commercial film?

A Yes.

Q Do you classify television film commercials as commercial films?

A Yes. I believe I would call them commercial films. Specific kind.

Q What television commercials do you classify as non-commercial films?

A Well, something that would not involve necessarily entertainment. I don't quite understand what your question is.

Q Fitting within the definition of commercial films, since the television film commercial is made for public consumption, you would then be forced within your definition to classify it as a commercial film, would you not?

A Yes.

Q The technique of stop motion photography, prior to 1945, the concept of it, there is nothing new and novel or unique about that?

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A Of stop motion photography itself?

Q Yes.

A No. That was an old technique.

Q It was what?

A That is an old technique, stop motion photography.

Q What techniques or concepts in Plaintiff's Exhibit 3-A for identification did you employ therein that you considered to be novel and unique at the time you created that film?

A At the time I created it I felt that the creation of a personality in the package was very novel and unique.

Q That is primarily because you had never seen a three-dimensional object move in accordance with the principles utilized in stop motion photography?

A No. That would have nothing to do with that.

Q What did you base your concept on?

A Because an inanimate object simply moving through the process of stop motion photography doesn't necessarily have a personality of its own.

Q What do you mean by "personality"?

A Gives the effect of a living thing, to attract attention.

Q That is to say, it moves?

A It moves in a specific type of manner.

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Q Yes? But without the utilization of an aid, such as a hand?

A Yes.

Q Being inanimate it could not move itself?

A But there would be a distinction between a mechanical movement or a movement that would suggest life or suggest that the thing was alive, rather than just moving around like skidding on a table top.

Q Isn't the primary principle employed in stop motion photography as a basic concept, attempt to give life to an inanimate object?

A For movement I would say. Not necessarily to give life. But to give the concept of an idea.

Q What are the elements of the personality you created in the film?

A I felt that I used the packages in such a way that they became a distinctive personality. I don't know what other word to use. They were a living thing. And they were attractive because of that.

Q You mean because they --

A Because they didn't just move around for the sake of moving. They did a pattern of a dance, synchronization to music, for one thing. It is a combination of ideas.

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Q In other words, the novelty aspect of your film would like in the movement of the package and/or the cigarette, in synchronization to music, is that correct?

A In a specific manner, yes.

Q When you say in a specific manner, all you mean there is the sequence of events that took place in the course of the film, isn't that right?

A That would be the continuity.

Q That is the continuity of the film?

A I would say the specific way it moves, as to whether it moves simply as something mechanical or whether it moves as something alive.

Q Isn't that a matter of craftsmanship?

A In a sense.

Q What else?

A I would say it was a basic idea, a conception as to how a thing should move. I think there is a distinction there.

Q Is there anything else novel or unique in Plaintiff's Exhibit 3-A for identification that you considered to be novel and unique at the time you created it?

A I felt at the time I created it, that was before I

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knew of the existence of the films that I was shown yesterday, I felt my approach, the whole photographic approach for one thing, as particularly the synchronization to music of the product, in a specific manner--to my knowledge at that time it had never been done.

Q Did you change your mind after watching the exhibitions yesterday?

A To a certain degree, yes.

Q To what degree?

A To the fact that I saw cigarettes move and walk around in film No. 1, I believe it was.

Q As well as packages?

A As well as packages, yes.

Q You saw them appear to march and dance in synchronization of music in the WORLD'S FAIR and SALESMAN'S FILM, is that right?

A Yes. They moved around. In the SALESMAN'S FILM there were cartoons.

Q Are you suggesting that the WORLD'S FAIR FILM and the SALESMAN'S MOVIE are animated cartoon drawings as opposed to being stop motion photography?

A A section of one of them I believe is.

Q Let's say in stop motion photography, did you notice the dancing and movement of the cigarettes

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in synchronization to music, as a result of stop motion photography?

A Yes.

Q In the WORLD'S FAIR and SALESMAN'S MOVIE?

A Yes.

Q Did the cigarettes and packages appear to have a personality?

A No. I felt they were mechanical entities that moved around in a mechanical manner.

Q You would suggest that the craftsmanship in those films was not up to the par of Plaintiff's Exhibit 3-A for identification?

A Yes. But I believe it involves more than craftsmanship.

Q What else does it involve?

A It involves a basic conception. Synchronization to music, which again involves personality.

Q You say a basic conception. What does that mean? Translate that into some more defined terms, less nebulous terms than the word "personality," since you say personality differs in the inanimate object, depending on the craftsman's art.

A It is something very difficult to explain in a concrete form. When you see films, you know it is there or

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you know it is not there.

Q Early in the deposition, you referred to your idea?

A Yes.

Q As employed in your film as that of putting personality into inanimate packages, specifically a cigarette package?

A Yes.

Q Do you recall that?

A Yes. I do.

Q And you advised us also earlier in your deposition that that idea was novel and unique as far as you knew, in 1945, is that right?

A Yes.

Q Having seen these films yesterday, has that not changed your mind?

A The latter films have but not the first two.

Q In what way did the first two fail to change your mind, in that they lacked personality being placed into inanimate packages, specifically cigarette packages?

A Well, for one thing, the approach was not essentially an entertainment approach, from the cigarette package itself.

Q That is a matter of your opinion?

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A Yes.

Q And your receptiveness to the particular film?

A That is correct.

Q I might differ?

A Possibly, yes.

Q So might many other people?

A Yes.

Q Entertainment is a personal matter?

A Yes.

Q Go ahead. Continue with the differences.

A I felt, it is very difficult to put it in specific words, but if you run the films consecutively, in order, as they were shown, why you can see the difference, of the films of the first two and the films 9, 10, 11 and 12, and the technique and the approach.

Q By technique, again, don't we get back to the craftsman's art, his ability to put this action into the inanimate object? That is what we mean by the technique.

A Stop motion technique, essentially, yes.

Q What was the other point you made? What is the difference in the approach between the WORLDSS FAIR and SALESMAN'S MOVIE, and the approach in the American Tobacco films that we used subsequent to 1948 as you

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observed it?

A As I observed it the approach was more toward the theatrical staging, you might say, or directorial approach, where you involved your packages in dance routines similar to the way the live action routine would be staged.

Q You considered the craftsmanship and technqiue better in the films used by American Tobacco, subsequent to 1948?

A Yes.

Q Did you find the craftsmanship was better than as exhibited in Plaintiff's Exhibit 3-A for identification?

A I would have to see them again, to refresh my recollection.

Q Wherein did you find your craftsmanship exceeded the craftsmanship displayed in the films used by American Tobacco, subsequent to 1948?

A I didn't specifically find my craftsmanship exceeded, as I stated before, there were certain parts, one balanced against the other. It is hard to just take a section out of it, unless you are actually looking at the film.

Q Then the only elements of novelty in your film,

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in your opinion, as of 1945, prior to seeing the film exhibition yesterday, lay in the craftsmanship or technique employed as well as what you term a more theatrical approach? Were there any other elements in your film that you considered to be novel, original, unique?

A The manner in which I photographed the picture, at that time, was novel and unique. The way the cuts were arranged to fit a certain rhythm to the music.

Q That is part of the craftsmanship and technique employed, was it not?

A Yes. Part of the photography craftsmanship.

Q You found that your craftsmanship, in your film, in what respect, was better than that exhibited in the WORLD'S FAIR and the SALESMAN'S MOVIE?

A We were talking before about the WORLD'S FAIR and SALESMAN'S MOVIE, or films after that time? I am a bit confused.

Q I don't know what you mean before.

A We were discussing, I thought, films after 1948?

MR. ELDRIDGE: Read the question.

(The question was read.)

A Yes.

Q Then what else, Mr. Harryhausen, besides what you term superior craftsmanship and a more theatrical

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approach, do you find represent novel and unique elements in your film, as opposed to the WORLD'S FAIR and the SALESMAN'S MOVIE?

A I approached my technique originally, my film, which is Exhibit 3-A, with a much more subtle approach than the other two films.

Q There again you aretalking about a more theatrical approach, are you not?

A That would be in the realm of the theatrical staging of it, yes.

Q I am asking you beyond what you term superior craftsmanship, and theatrical approach, what other concepts were employed in your film that you considered novel and unique that you do not find in the WORLD'S FAIR and SALESMAN'S MOVIE?

A We have included the personality, do we not? The concept of the personality.

Q Again we said that related to the craftsman's ability to make the object appear more animated and less mechanical, isn't that correct?

A Yes. But it goes on into the realm of the idea as well.

Q What is the idea?

A The idea of creating an interest, creating an interest

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by capturing your viewer's attention, I should say, by entertaining them before you sell them.

Q Again you are talking about a more theatrical approach?

A Yes.

Q Entertainment and theatricals are synonymous?

A That is correct.

Q You are saying the only basic differences lie in greater and more superior craftsmanship and a theatrical approach. I am asking if there is anything else you found in your film following a viewing of the WORLD'S FAIR and SALESMAN's MOVIE, that doesn't, in effect, coincide and exist together?

A That do not exist?

Q Yes. In other words, what elements other than what you just mentioned here do you find in your film that are not present in the WORLD'S FAIR and SALESMAN'S MOVIE? You have told me of your superior craftsmanship and your theatrical approach. What is your answer?

A That is something you have to determine by seeing the films progressively projected.

Q You did that yesterday?

A Yes.

Q I am asking you, after having the benefit of that

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visual examination, if you will answer the question.

A It was my whole approach that is essentially different, I felt.

Q Again, it is more theatrical, isn't that correct?

A Yes. And it entertains while it sells.

Q That is your so-called theatrical approach again?

A That is part of it.

Q I am asking you what else besides the theatrical approach and what you term superior craftsmanship? What else?

A Mine was, I guess that would come under the realm of craftsmanship, the synchronization was more accurate, shall we say.

Q Again, that is part of the technician's skill in putting the film together and shooting it, isn't that correct?

A Yes.

Q Anything else?

A It is difficult to put it into words.

Q Take your time and think about it.

A I think those would cover the essential differences.

Q When you say those, you mean again, so we are

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clear, superior craftsmanship in the production of film, and a more theatrical approach?

A Yes. Which was a basic idea behind my original idea.

Q Will you tell us again what you mean by a theatrical approach, or can it be said merely to mean that you felt that your film had greater entertainment value, and still performed the function of a commerical film?

A That is correct.

Q I just ask you to look at your complaint, Mr. Harryhausen, if you would, Paragraph Two thereof. I should say your amended complaint.

A Yes.

Q When you refer in that paragraph to a new, novel and unique idea or culmination of ideas, you refer to the elements we have just been discussing, is that correct?

A Yes.

Q Let me ask you something, Mr. Harryhausen. Assume, if you will, that you could not have used the music which you synchronized to your film, the music from Oklahama, SURREY WITH THE FRINGE ON TOP, commercially, at that time.

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A Yes.

Q Would you consider that your film had an entertainment value?

A I would have to have another score substituted. That would be mainly what I had in mind.

Q Actually, one of the attractive or entertainment elements, we might say, in the film, would be the utilization of a popular song,popular at that time?

A It could be any type of music that had a similar type of beat, or similar type of synchronization that could fit that, yes.

Q Don't you think that SURREY WITH THE FRINGE ON TOP would enhance it over any other song that was not currentlypopular?

A No.

Q It could be any music?

A Any music.

Q As long as it had the beat, and the popularity of the music synchronized would not decrease or enhance the entertainment value of the film?

A No.

Q By the way, yesterday, when you viewed the SALESMAN'S FILM and the WORLD'S FAIR film, you did see cigarettes align themselves and form the letters,

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L.S.M.F.T. Do you recall seeing that?

A Yes, I do.

MR. MACKEY: The first one was the story of Lucky Strike, not L.S.M.F.T.

MR. ELDRIDGE: I asked if in either of the films he saw yesterday, the WORLD'S FAIR OR SALESMAN'S FILM, whether he saw the cigarettes align themselves and spell out the letters L.S.M.F.T.

Q You said yes?

A That was in a cartoon medium.

Q It was not stop motion technique?

A It was animation.

Q Since you told me that animation is a broad heading that would cover stop motion, I am asking you whether you know if the photographic technique employed in spelling out L.S.M.F.T., in either of those two films, the WORLD'S FAIR or the SALESMAN'S FILM, was done in stop motion, as opposed to drawing animation?

A Drawing animation would be the latter part of the SALESMAN'S FILM.

Q Each time that you saw the cigarettes spell out L.S.M.F.T., in either of those films, you say it was done by drawings as opposed to stop motion technique?

A The moving out, of the cigarettes, of the package.

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Q I am talking about the spelling out of the letters, L.S.M.F.T.?

A That is what I mean. The cigarettes that came from the package.

Q And spell out those letters, L.S.M.F.T.?

A Yes.

Q To the viewer who sees that, and first I will ask you, a non-technical person, is that something that is readily observable, that is whether or not it would be done in stop motion technique or animation?

A Not to any great degree, I suppose.

Q No one can really tell the difference, as a viewer?

A Not in that particular instance.

Q Meaning, the WORLD'S FAIR and SALESMAN'S MOVIE?

A Yes.

Q Do you know who made those films?

A I was told Jam Handy.

Q By the way, Mr. Harryhausen, do you recall in the film, the SALESMAN'S MOVIE, where the cigarettes are in a tray and they come out of the tray, and spell out L.S.M.F.T. Do you recall seeing that yesterday?

A Come out of the tray?

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Harryhausen - direct

Q And then thereafter spell out the letters L.S.M.F.T.?

A The ends of them?

Q Do you recall that?

A Yes. I recall that.

Q Do you recall whether that was drawing animation or whether that was done in stop motion photography?

A It could have been done by animation or stop motion.

Q It could have been done either way?

A Either animation or stop motion.

Q You could not tell the difference in observing the film?

A No.

Q Did you happen to notice in either of those two films, the WORLD'S FAIR AND SALESMAN'S MOVIE that you saw yesterday, cigarettes emerging from a package?

A Emerging from a package.

Q Appear to come out of a package without the aid of a hand or something like that?

A Yes. I believe I recall that.

Q Do you recall seeing in either of those two films yesterday, cigarettes replace themselves in a

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package?

A No. I don't recall that.

Q You didn't see that in either of those two films?

A No.

Q You don't consider, after seeing the films yesterday, that any of the particular action in your film represents anything novel or unique, do you?

A Yes, I do.

Q What action within the film? That is, what the packages or cigarettes physically did within your film, and bearing in mind you saw these films yesterday, made prior to your film?

A Yes.

Q What elements of the kind I have been talking about did you consider unique, meaning the action that the three-dimensional elements went through?

A Essentially the manner in which I danced my packages, the introduction to my film, before the cigarettes emerged.

Q Would you elaborate what you mean?

A Again that goes into the artistic realm of using the package as a personality, in developing a personality, which goes into --

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Harryhausen - direct

Q Then basically are you not suggesting that you feel you have a greater theatrical entertainment value in the method of having the packages moved that you utilized as opposed to the methods used in the WORLD'S FAIR and SALESMAN'S MOVIE?

A But the methods that I used go into a different realm, I think.

Q A different realm?

A An artistic realm, gives life to a package.

Q Again we are getting back to the discussion, are we not, of what you call superior craftsmanship plus your theatrical approach?

A It goes into another realm.

Q What realm?

A It goes into a basic artistic creation which is executed and put into concrete form. It is as nebulous as a novel, or any piece of literary work. It is a conception.

Q Perhaps you miss the point of my question. Going back, I was talking about the movement or action depicted in your film?

A Yes.

Q Meaning right to left, up and down, backwards and forwards, side to side, and so forth. There is

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nothing novel in the movement of a package of cigarettes in stop motion photography, today or in 1945?

A There was at that time.

Q In 1945?

A I consider that novel and new in 1945.

Q Movement of a three-dimensional object such as a package of cigarettes, you considered to be novel in 1945?

A That was part of it, yes.

Q Do you still hold to that opinion after seeing films made after 1945, seeing cigarette packages move?

A Not for the sake of moving, no. But there is another element that goes into it, the creative element.

Q What is that creative element?

A I am trying to explain. Developing a personality in your object which gets out of the realm of craftsmanship. It is a conception, an idea.

Q By developing a personality, you are suggesting, are you not, that your package appeared to be more life-like than what you observed in the WORLD'S FAIR and SALESMAN'S MOVIE?

A Yes. The way it walked, the way it moved, all part of the same thing. The routine it went through.

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The fact that there was a continuity in the routine.

Q That again is your theatrical approach, which we discussed earlier, is that correct?

A Yes.

Q And when you talk about the additional movements that you didn't see, in the WORLD'S FAIR or the SALESMAN'S FILM, we are talking about your craftsmanship, are we not?

A I would not say that was craftsmanship. I would say that is an artistic creation of an individual who does it.

Q Assuming that one package of cigarettes only moves left and right and then you did one that moved up and down and left and right, would you make a distinction between the two and suggest that the movement in the latter was novel, since you had not seen that particular movement up and down in the former?

MR. MACKEY: I object to the form of that question, on the ground that you are arguing with the witness, and he has given his answer heretofore, two or three times.

MR. ELDRIDGE: Withdrawn.

Q Paragraph Five of your complaint, Mr. Harryhausen, in the third line on the page which bears

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Mr. Mackey's signature, you use a phrase 'The basic creative ideas of the plaintiff's creation. Would you tell us what you mean by the basic creative ideas of your basic creation?

A It gets in the realm of the theatrical, the way I staged my particular film, which involves the manner in which the package itself danced.

Q You say the manner of dancing in the routine, the dance routine?

A It involves a number of things.

Q The dance pattern?

A The pattern, the dance pattern.

Q What else?

A It involves the specific movements that I used in that.

Q Again, that is the marching or dance pattern, is it not?

A The way the package moved.

Q The way it moved?

A In order to create the personality.

Q You mean your movement, as we were talking about before, in your opinion, was more life-like than that that you observed in the SALESMAN'S and MARCH OF TIME film?

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MR. MACKEY: I object to that.

MR. ELDRIDGE: All right. Withdrawn.

BY MR. ELDRIDGE:

Q What else, Mr. Harryhausen?

A Then your basic idea involved a number of elements to create your overall pattern.

Q What else?

A The elements that I discussed before, the pattern of the movement.

Q You mean the manner of the pattern of the dance, and the movement of the package and theatricals?

A Yes.

MR. MACKEY: I object. I think you should let him finish his answer.

A The overall influence in the basic idea.

Q You mean those four things?

A Those four things and other elements.

Q What other elements?

A Those are essentially the elements, and when you put them all together you have a creative pattern that was different and distinct from another creative pattern.

Q When you used the term in Paragraph Five of your amended complaint, basic creative ideas, your

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creation, meaning the film?

A Yes.

Q Plaintiff's creation, the basic creative ideas represent the following, and correct me if I am wrong, and add to it if I am wrong, the staging involved therein, the manner of the dance pattern, and the pattern of movement of the package which equals a more theatrical approach. Is that really what you mean by your basic creative ideas?

MR. MACKEY: Why can't you let him state --

MR. ELDRIDGE: I am trying to incorporate what he told me and I ask him to subtract or add to it if he would like to, so we both understand what he means in his complaint.

Q Go ahead.

A The basic idea is the result you see after you finish a combination of these efforts. It is hard to break them down.

Q They have certain elements that make up the basic creative ideas?

A Yes.

Q You told me the ones I just mentioned to you. I asked you if there are any in addition to that?

A Will you repeat these, please?

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MR. ELDRIDGE: Will you read the question.

(The record was read as follows:

"Q Plaintiff's creation, the basic creative ideas represent the following, and correct me if I am wrong, and add to it if I am wrong, the staging involved therein, the manner of the dance pattern, and the pattern of movement of the package which equals a more theatrical approach. Is that really what you mean by your basic creative ideas?"

THE WITNESS: I would like to go off the record a moment.

(Discussion off the record between Witness and Mr. Mackey.)

BY MR. ELDRIDGE:

Q Do you want it read again?

(The question was again read.)

A Once again you get into the question of artistic appeals.

Q Artistic what?

A Artistic appeal that was incorporated in my particular arrangements of these patterns.

Q That is what I tried to set forth for you, that that equaled what you termed a more theatrical

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approach, isn't that correct?

A Yes. But there is a creative approach in embodying these ideas.

Q Everything you do represents and is creative?

A Yes.

Q What I am telling you about is your film, in your mind, I believe, as you expressed it, represents a more theatrical approach since it embodies the elements I listed?

A It embodies the elements and it also had the unique quality about it because of the embodiment of these elements.

Q Of the elements we are referring to?

A And the individual creation, the individual pattern put into it.

Q The elements that you mentioned were staging, the matter of the dance pattern, and the manner of movement of the packages. You said that equaled a more theatrical approach, which was your creative effort?

A Those are incorporations, yes.

Q Now I asked you whether or not that represented your basic creative ideas since you used the term in your own complaint?

A Yes.

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Q And that is correct, is it not?

A Yes.

Q Other than the WORLD'S FAIR, and SALESMAN'S MOVIE, which you witnessed yesterday, had you prior to that time seen any stop motion or animated film?

MR. MACKEY: Of any kind?

Q Utilizing three-dimensional objects in motion, other than the puppet film you referred to and the KING KONG type of film?

A No.

Q Nothing?

A No.

Q Prior to commencing this action, had you made any kind of an examination to determine whether other such films had been manufactured by others, prior to 1945?

A Only that was within my grasp.

Q What examination was within your grasp?

A I guess I actually didn't look into it. No.

Q By the way, in the WORLD'S FAIR AND SALESMAN'S MOVIE, did you note during the stop motion photography, or animation, drawing animation that you say existed, there was music sychronized to the sound track?

A Drawing animation.

Q In both, stop motion photography and photography

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employing drawing animation?

A I didn"t get a sense that it was synchronized exactly to the music, no.

Q Did you not hear music?

A Yes. There is a distinction between background music and synchronization.

Q Are you saying then that when the cigarettes appeared to march, the packages moved, that they did not appear to be in beat with the music; is that what you mean?

MR. MACKEY: I object to that. He didn't say that.

MR. ELDRIDGE: I am trying to understand what he meant when he said that it was background music as opposed to music used for some other form. I am asking you, is that that you meant?

MR. MACKEY: I object to it on the form, and it is repetitious.

MR. ELDRIDGE: Repetitious? We haven't gone into the question of the synchronization of music and movement.

MR. MACKEY: He answered you to the previous question, that there was not synchronization. And you asked him do you mean so and so. He said what he meant.

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Q There was a music sound track on the film during the course of stop motion photography, and photography of animation, was there not?

A Yes.

Q Do you recall whether or not there was a voice audio track during the course of the stop motion photography and the photography of animated drawing?

A No. I would have to see that again. I studied other things, I would have to study the film again.

Q You do not know of your own knowledge, do you, Mr. Harryhausen, when the WORLD'S FAIR MOVIE was produced?

A Only from the information here.

Q You have no personal knowledge of that?

A No.

Q You have no personal knowledge when the SALESMAN'S MOVIE was produced by Jam Handy, do you?

A No.

Q Do you know whether or not Mr. John Freese was employed by Jam Handy in 1938, 1939 and 1940?

A No. I have no personal information.

Q You never knew that John Freese was ever employed by Jam Handy, did you?

A No.

Q Do you know what business Jam Handy is engaged

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in?

A I understand they are engaged in industrial films, commercial films.

Q Anything else?

A That is all I know.

Q Do you know how long they have been in business?

A No.

Q You don't know how long Freese was employed at that organization, or if he ever was?

A No.

Q Do you know if John Freese had anything to do with the creation of the WORLD'S FAIR FILM and the SALESMAN'S MOVIE that you saw yesterday?

A No.

Q Where did you learn the stop motion photography technique?

A I started out experimenting on my own, back in high school days.

Q That would have been when?

A 1935 I guess, 1936.

Q Did you study under any person, recognized authority, or work under anyone, where you gained any formal training or was it self-experimentation?

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A It started out as self-experimentation and then I showed some of my experiments to George Pal and I became employed with the George Pal Company.

Q And I assume during the course of that employment you gained greater knowledge of the stop motion techniques?

A I guess everyone gains, yes.

Q Do you know anything of George Pal's background in stop motion photography?

A No.

Q You mentioned that it was in 1941 and 1942 that you and Bob Jenness were both working for the George Pal organization?

A Yes, I believe it was then.

Q And were you both engaged in stop motion photographic work?

A Yes.

Q Are there any films that employed stop motion photography that you and Mr. Jenness worked on together?

A PUPPETUNES. I don't recall exactly which one.

Q More than one?

A That I could not recall.

Q But you did work together on the same subjects?

A Not necessarily on the same subjects. I don't

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recall just what we were working on at the same time. There were several pictures going at one time.

Q Both of you were basically engaged in the same type of work at that time?

A Yes.

Q Mr. Harryhausen, since 1946, January 1, 1946, have you had occasion to see any films on television that employed what you have told us were your basic creative ideas?

A Not since Lucky Strike films came out.

Q By Lucky Strike films what do you have reference to?

A The ones that are referred to as --

Q The ones you saw yesterday?

A 9, 10 and 11, yes.

MR. MACKEY: Did you say 8?

THE WITNESS: No. There was no 8.

Q Any other films?

A Not that I recall. Oh, after that, I guess there were Pepsi-Cola bottles, I remember that.

Q Any other than 9, 10 and 11 and the Pepsi-Cola film you make reference to?

A The Tarryton cigarette, the one I mentioned earlier.

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Q The Tarryton commercial you saw yesterday, the two commercials you saw yesterday?

A No. There was one I didn't see yesterday. That I saw before.

Q You are referring to that one?

A Yes.

Q When did you say you saw that film, for the first time, the commercial which you just made reference to?

A I don't recall. It was just a few years ago.

Q I am asking you now, what films other than films designated 9, 10 and 11, featuring Lucky Strike cigarettes, the Pepsi-Cola film, and the Tarryton commercial, you say you don't recall when you saw, and you didn't see it yesterday, what films on television have you seen since 1946?

A You mean other than --

Q Other than these I am just mentioning, that you say employ your basic created technique, or idea?

A Well, the CONGA, No. 12, was basically the one.

Q Film 12?

A Yes.

MR. MACKEY: OLD 29.

MR. ELDRIDGE: I think, Mr. Mackey, your

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witness can answer.

MR. MACKEY: I object on the ground that he is confused. He gave you all the names he saw yesterday and you ask me for a concession that those were the films he was complaining of.

MR. ELDRIDGE: I didn't. I asked you for a concession that he saw those films yesterday. I have no idea whether he believes in his own mind and heart whether or not they represent an appropriation of his basic creative ideas or not.

A I didn't get the impression that you were asking me about the basic ideas.

Q You understand the term "basic creative idea"?

A Yes. But I wasn't under the impression you were asking me about the films related to that.

Q You listen to the question now and try to answer. The question is a simple one. Since 1946 what films on television have you had occasion to observe that employed what you term in your complaint as your basic creative ideas, as contained in Plaintiff's Exhibit 3-A for identification. Do you understand that question?

A Yes. I understand it now but I didn't understand it before.

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Q Will you answer that?

A Yes. No. 9 and 10. Essentially No. 12.

Q Is that OLD 12 or New 12?

A Old 29 it says. HIT PARADE opening.

Q Which one do you refer to?

A '56--

Q The 1950 opening where the packages seem to come down a road?

A Yes.

Q You are referring to the 1950 HIT PARADE opening.

MR. MACKEY: We have '56 here as well.

MR. ELDRIDGE: I don"t know until this witness testifies that he believes the '56 HIT PARADE opening represents an appropriation of his idea.

Q I ask you that specifically. Do you believe it does?

A The '56 opening?

Q Yes. The '56 HIT PARADE opening?

A I want to get it straight. What is involved in the '56 opening?

Q Will you examine your own notes?

A I have a confusion here on what was shown previously and what we saw yesterday.

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Harryhausen - direct

Q All right. You made reference to a HIT PARADE opening that had packages that appeared to come down a road?

A Yes.

Q Was that the HIT PARADE opening that you believe represents an appropriation of your basic idea?

A Yes.

Q All right. Will you continue with the list of films that you have seen since 1946?

A The Tareyton that I referred to before, that I didn't recall seeing yesterday which involved the packages moving in a very similar manner to mine.

Q That is the element that you believe represents the appropriation of your basic creative idea in that particular commercial?

A Yes. Of course, all the elements are mixed. Various portions of them are mixed in each one. The portion I believe in the CONGA --

Q What portion is that?

A Twirling packages. As I recall that is the one that is referred to here. I don't know whether this is the description of the one we saw yesterday or not. There was one I noted.

MR. MACKEY: It has the reel number and

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everything else.

A There was one that had drawn cartoons. One HIT PARADE opening was an animated cartoon.

MR. JENNESS: That is the 1956.

A No. That one does not.

Q That does not represent an appropriation of the basic idea?

A That is the 1956?

Q That is the 1956 HIT PARADE opening.

A May I have re-read the ones I mentioned.

(Discussion off the record.)

A Those were specifically the patterns that I picked out, I felt an overall influence on all the films, subsequent to No. 9.

MR. ELDRIDGE: Will you read that.

(The answer was read.)

Q By that then, do I gather that the ones you named as representing an appropriation of your basic creative idea do so in that they utilize patterns which appear in Plaintiff's Exhibit 3-A for identification?

A Patterns, yes, and again it goes into the realm of personality.

Q And you noted that the packages had similar personalities in those films?

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A Yes.

Q Anything else?

A I felt the influence on the part of my film, all throughout, these films, the technique, the approach, what you call the basic ideas.

Q Mr. Harryhausen, do you have any personal knowledge as to the extent of the use in television, or otherwise, made of the following films by any of the defendants, 9, 10, 12, meaning Old 29, HIT PARADE opening, the Tareyton commercial you didn't see yesterday, and the CONGA commercial?

A Specific times that they were run? I know the HIT PARADE ran for a good many years.

Q You don't know how many?

A Probably five or six years.

Q Is that a guess on your part?

A A guess on my part.

Q You have no personal knowledge?

A No.

Q You have no personal knowledge of the extent of the use of the others?

A No.

May I go off the record a moment?

(Discussion off the record.)

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A I would like to talk with Mr. Mackey.

MR. ELDRIDGE: Note that the witness requests permission to talk to his counsel.

(Brief discussion between witness and Mr. Mackey.)

A I would like to say that I observed that these films had been used, the bulk of them, I can't specifically state each one, had been used ever since 1948, off and on.

Q Meaning all of the films that we have just listed here?

A Yes.

Q You have had personal observation of that?

A Some of them, not every one of them.

Q What specific films in the ones listed have you any personal knowledge of that were used continuously on and off from 1948 to today?

A The HIT PARADE.

Q 1950 HIT PARADE opening, you know, by personal observation, has been used from 1948 up to the present, on and off; is that correct?

A I have seen it spasmodically, yes.

Q During that period of time?

A Yes.

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Q What stations did you see it over during 1948 and 1949?

A Not in 1948 and 1949, no.

Q What stations have you recently seen it over?

A Some of the others, whenever it came out. I don't recall what stations I saw it on.

Q You have no personal knowledge of having seen the 1950 opening in 1948 or 1949, have you?

A No.

Q Do you have any personal knowledge of having seen it, at any time after September of 1956?

A No.

Q How many times did you see film commercial No. 9 on television?

A I don't know. I don't recall that I saw that.

Q You don't know?

A I don't sit there and count them.

Q Have you seen one, once?

A I can't recall seeing No. 9.

Q At all?

A I could be wrong, I don't know.

Q You have no personal recollection of having ever seen No. 9 on television, at any time?

A I can't recall.

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Q How about No. 10?

A 10, yes.

Q When did you see 10?

A I can't say the specific date.

Q Any year that you saw it?

A Whenever it came out, probably.

Q Do you have any specific recollection of having seen it on television, at any time during 1950 to the present?

A Specifically, as No. 10?

Q Is that correct, other than yesterday?

A All I can say is I have seen them on and off. I can't specifically state when and where.

Q I asked you a simple question. From 1950 to date do you have any personal recollection of having seen No. 10 exhibited on television?

MR. MACKEY: I object to that on the ground that he answered it already, and said he saw it off and on and can't tell you when and where.

MR. ELDRIDGE: I am asking him.

Q Then does your answer mean that since 1950 you saw it on and off but you can't remember where or when? Is that what you mean?

A Not since 1950, I don't recall.

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Q You have no knowledge?

A It seems to me I saw No. 10.

Q It seems to you that you saw No. 10. When? Prior to 1950?

A I guess it was, yes. I have no way of keeping track of the date when I see television.

Q You made the remark that you had seen all of them on and off during the period 1948 through 1956. What specific films of those named have you seen during the period 1950 to 1956 on television?

A The HIT PARADE opening was one of them.

Q You mean the 1950 HIT PARADE opening?

A Yes. One of the CONGA.

Q All right. How many times did you see that?

A I don't know. I didn't count.

Q Do you remember what year you saw it?

A That is the least of my worries. No. I don't recall. I don't recall how many times I saw that.

Q Any others that you personally recall having seen?

A I couldnot state a definite number of times, of seeing them.

Q Do you have any personal knowledge or recollection of having specifically seen any of these other

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than the 1950 HIT PARADE opening and the CONGA one during the period of 1950 to 1956 on television?

A The Tareytons.

Q The Tareyton one which you did not see yesterday?

A Which I did not see yesterday. It seems to me I saw what is designated as No. 12.

Q During the period 1950 to 1956?

A As to where and when, I don't recall.

Q Any others?

A I can't be specific about just when the dates were.

Q In other words, Mr. Harryhausen, what types of action can you obtain in the course of stop motion photography, out of a three-dimensional object such as a cigarette package?

A What types of actions?

Q Yes.

A As many varieties as your imagination will stretch to.

Q Will you name some, so I will know some of the limitations of the technique?

MR. MACKEY: I object to that as immaterial and irrelevant.

Q Answer the question. The objection is noted.

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MR. MACKEY: I will tell him not to answer because he doesn't have to tell you the points that he can imagine and so forth.

MR. ELDRIDGE: I suggest you re-consider your direction to the witness on the ground that if I do not get answers to questions I put to this witness, I will be forced to move in Federal Court to compel answers to be made, and I will ask that Mr. Harryhausen be brought back to New York to answer each and every question that the Court says I am entitled to get, and for that reason I ask you to re-consider any directions you give to him not to answer a question. Your objections will be duly noted on the record.

MR. MACKEY: Well, he doesn't want to be held here. He has been forced to come here, I believe, unnecessarily, but with our consent and we don't want to be put to more expense.

MR. ELDRIDGE: I don't either. That is why I suggest you re-consider your objection.

MR. MACKEY: While I adhere to my objection I withdraw the direction to Mr. Harryhausen because of its impracticability.

MR. ELDRIDGE: Go ahead and answer.

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Harryhausen - direct

THE WITNESS: Will you please repeat the question.

(The question was read.)

BY MR. ELDRIDGE:

Q For example, Mr. Harryhausen, you noted in the WORLD'S FAIR and SALESMAN'S MOVIE, and your movie, and some of the subsequent movies, packages such as cigarettes being made to appear to march, to move, to dance, and things like that. What I am interested in knowing, what other types of action can one put a three-dimensional object through in the course of utilizing this technique of stop motion photography in making a commercial film?

A Flying through the air.

Q Flying.

A Dissolving in and out.

Q You mean by zooming back and forth with the camera?

A Zooming back and forth, and dissolving in and out. To dance specifically.

Q You mentioned marching and dancing.

A Yes. Transpose into other objects.

Q Would you elaborate on that. I don't quite follow you.

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A They can interchange into other than cigarette packages or other than the object that you see.

Q Give me an example of what you mean?

A For example, the package can dissolve into a cigarette, or reduce itself into a specific size so that it resembles another object.

Q I see. Go ahead.

A Roughly, that is about all that I can think of at the moment.

Q In other words, with respect to a three-dimensional object, such as a package, the basic form of action is somewhat limited, is it not, that one can accomplish,utilizing this photographic technique?

A Somewhat limited.

Q Yes?

A It depends on the subject that is involved.

Q We were discussing a three-dimensional object such as a package of cigarettes or a cigarette itself?

A As to whether ideas come to you when you work on a specific problem, a specific film.

Q I am not discussing now with you the pattern of movement. I am discussing the basic concepts of movement to which you can put these objects.

MR. MACKEY: I object to these questions on

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the ground that they are hypothetical and not based on the issues here.

MR. ELDRIDGE: They are very much based on the issues, Mr. Mackey. I suggest you re-read Paragraph Two of your own complaint.

Please read the last question.

(The question was read.)

BY MR. ELDRIDGE:

Q When I said the basic concepts, I referred to the concepts you just named, marching, dancing, zooming, and dissolving, transposition from one object into another, flying.

A Twirling, whirling, did we cover revolving?

Q You said twirling and whirling. Unless you believe revolving is something in addition to that?

A That is all I can think of.

Q In other words, those seven basic movements are about the only ones that you can think of right now that can be employed with a three-dimensional object such as a cigarette or cigarette package, in the use of stop motion photography technique?

A As I said before, it depends again on the subject, if you have a specific subject, you can devise other ways that you can't think of on the spur of the moment.

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Harryhausen - direct

Q I am talking about a three-dimensional object such as a package of cigarettes or a cigarette itself?

A That is all I can think of at the moment.

Q Subsequent to the printing of the first print of Plaintiff's Exhibit 3-A for identification, from the original negative, to whom did you exhibit that film and would you take the exhibitions in chronological order, giving me the dates, as best you can recollect?

A You mean the first time I received a print?

Q Yes.

A That would be sometime when?

Q In late '45.

A That would be late '45, yes.

Q From that date on, will you chronologically list for me the persons to whom you exhibited that print and give me the date, as best you can recollect, of said exhibition date?

A My immediate family.

Q At or about the time you had the print returned?

A When I had the print, I had to examine it, yes. I don't recall showing it until after I got to New York. I showed it to a few friends of mine.

Q In New York?

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A In New York, yes.

Q When was that?

A Just after -- I guess it was the latter part of '45. I don't know the specific date.

Q A few of your friends while you were in Service?

A At the Army Post, yes. And then those were the only two times, and then I contacted, then the contact was made at the American Tobacco Company.

Q You next took your film for an exhibition at the American Tobacco?

A Yes.

Q When was that?

A No. At Mr. Freese's office; Foote, Cone & Belding, I beg your pardon.

Q When was that?

A That was the latter part of 1945 or early 1946.

Q And next when?

A After Mr. Freese's showing, that I gave at Mr. Freese's organization, I showed it to the Valentino Sarra organization.

Q When was that?

A Around the same period of time. Within a few days. I don't remember the specific date.

MR. WHEELER: Will you tell us where you

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told it to Valentino Sarra?

A Mr. Sarra's studio.

Q Where was that?

A I have no idea where it was. It is a long time ago. It was at his photographic studio.

Q In New York?

A In New York City, yes.

Q You have no idea in the city where it was located?

A No, I don't.

Q Who witnessed the exhibition at Mr. Sarra's organization, as you say?

A Mr. Cullen Landis, Mr. Sarra saw it.

Q Mr. Valentino Sarra?

A Mr. Valentino Sarra. At the time when I exhibited to Mr. Landis, he asked if he might call in some of the people from the various departments to see the film, it was running three times I believe at the Sarra organization. It was running three times in succession. Now, maybe 10, 12, 15 people at the second and third showing.

Q You can identify no one other than Mr. Cullen Landis and Mr. Valentino Sarra who were present in the room during those three exhibitions?

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A That is correct.

Q Were you there?

A I was there, yes.

Q Were you there at the exhibition to Mr. Freese?

A At the first exhibition to Mr. Freese?

Q The one you just told me about in late '45 and '56.

A I don't believe I was.

Q To whom and when did you next exhibit the film, following the Sarra exhibition you just related?

A I think after that I showed it to a number of advertising agencies. I think it was BBD&O was one.

Q Who was there?

A I don't recall exactly who was present at that show.

Q Mr. Olds?

A He could have been, yes.

Q When was that?

A That was the early part of '46, I believe.

Q What other advertising agencies did you show it to and when?

A I think Young & Rubicam. I am not certain of that.

Q Do you recall who was there?

A I don't recall any particular person.

Q Do you recall approximately when it was?

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A It was all within a week or a few days or so.

Q Any other advertising agencies you specifically recall witnessed an exhibition of Plaintiff's Exhibit 3-A for identification?

A There were several others, but I could not recall the names.

Q How many? Five, ten?

A It is hard to say. Three at least; three I would say.

Q At least three?

A Yes.

Q More likely than that, more?

A I could not say.

Q You cannot identify any of the at least three?

A No.

Q Can you identify any of the individuals at the at least three agencies that witnessed the exhibition?

A No.

Q What was the purpose of the exhibition to these five advertising agencies?

A My first exhibition to Mr. Freese --

Q I am not including Mr. Freese in this. I am referring to BBD&O, Y&R, and the other at least three agencies?

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A I have to go back to my first exhibition before I can answer your question.

Q I am asking what was the purpose of the exhibition to BBD&O, Y&R, and the other three agencies whose identity you cannot recall?

MR. MACKEY: I object to that as immaterial and irrelevant.

MR. ELDRIDGE: Let him answer.

A I have to go back to relate the story as to why I went to them.

Q All right. Go ahead.

A I first took the product to Mr. Freese's office because I had used a Lucky Strike product in my film and I felt that the Lucky Strike people would be interested in it. I was told that, by a friend of mine, and Mr. Freese said he was not interested in buying the film at that time. I approached him for a sale of the film because I felt it was something very unique, and I had no knowledge of anything else on the market like it, and that was the specific reason that it was shown to Mr. Freese. I did not feel that they wanted to purchase the film at that time.

Q You tell me you saw the SALESMAN'S MOVIE at the time you exhibited to Mr. Freese?

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A As I recall, he showed me, at the showing yesterday, I recalled the farmer and the tobacco leaf.

Q You mean the SALESMAN'S MOVIE?

A The SALESMAN'S MOVIE.

Q You saw it at the same time you exhibited your film to him?

A No. I think it was afterwards. I am not certain. It looked familiar.

Q You mean at or about that time?

A At or about that time.

Q And getting back to my question, what was the purpose of the exhibition to BBD&O, Y&R, and the other three agencies?

A After Lucky Strike, Mr. Preese's office didn't see, didn't feel that they wanted to purchase the film, or make any use of it, I felt that I could use it as a sample to show what could be done with other brands of cigarettes.

Q What cigarettes were you advised that BBD&O had early in 1946?

A I don't recall.

Q Do you recall whether they had any or not?

A I can't recall.

Q What cigarette accounts did Y&R have at that

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time?

A I don't recall specifically.

Q Do you recall any of the agencies that you exhibited the film to?

A No, I do not.

Q That they had in their house, cigarette accounts?

A We showed it to someone who represented Camels, I am not certain which one. And I think one of them represented Philip Morris, but I don't know just which one.

Q Did you exhibit it to the Biow Agency?

A The what?

Q The Biow -- B-i-o-w Agency?

A Not that I recall.

Q Following the exhibition to BBD&O, and Y&R, and the other three agencies, to what persons or entities did you thereafter exhibit Plaintiff's Exhibit 3-A for identification?

A That is difficult to tell at this time. I returned to the West Coast and left the films in the possession of my East Coast representative, Charlotte Knight.

Q You personally, then, did not exhibit it to any other persons or entities other than you just named?

A Not that I can recall.

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Q Or described?

A Not that I can recall.

Q Did you have any knowledge of the persons or entities that Miss Knight showed your film to?

A Not at this time. That was a long time ago.

Q Are you in communication with Miss Knight today?

A Yes. I speak with her.

Q Prior to executing your deposition, would you contact her and see if you can obtain the information as to the other persons or entities and the dates thereof that she exhibited your film, subsequent to early '46?

A If she has any records of it.

Q Yes. Or a personal recollection?

A All right.

MR. ELDRIDGE: Is that agreeable?

MR. MACKEY: That is agreeable to me.

BY MR. ELDRIDGE:

Q And at the same time, if it happens to be an entity such as an ad agency, and she knows the identity of the person who saw the film, would you add the name or names?

A The person?

Q Yes. Add the particular entity or entities.

MR. ELDRIDGE: Is that agreeable also, Mr.

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Mackey?

MR. MACKEY: Yes.

A For what period of time is that?

Q Whatever period of time she had it in her possession, which I believe you said -- what period of time was it?

A Till the middle of '48, I believe.

Q The middle of '48?

A I would have to refresh my recollection on that.

Q You personally have no recollection of ever having exhibited it to any other person or entity other than those you have just named or described?

A I can't recall. There may have been, but I don't recall.

Q Do you know a gentleman by the name of Chet Caleeza?

A Yes.

Q Who is he?

A He was with one of the advertising companies. I believe BBD&O maybe, or Young & Rubicam. I am not certain.

Q He was one of the men to whom you showed the film in early '46?

A I believe I showed him that.

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(A short recess was taken.)

BY MR. ELDRIDGE:

Q You have completed your list of persons or entities that have seen Plaintiff's Exhibit 3-A for identification, to the best of your knowledge and recollection, is that correct?

A Yes.

Q You referred to an exhibition to Mr. John Freese at the offices of Foote, Cone & Belding in New York in late 1945 or early 1946, is that correct?

A Yes, that is correct.

Q Who was present at that exhibition?

A The first exhibition I am not certain who was present, because the film was taken over to Mr. Freese by someone else, other than myself.

Q Who was that?

A It was Marie Maas.

Q And did she ever advise you who was present at the exhibition?

A Not that I recall.

Q She did advise you that it took place at the offices of Foote, Cone & Belding?

A Yes.

Q She did advise you that Mr. John Freese

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witnessed the exhibition?

A Yes.

Q Did she advise you of anything else that took place at the exhibition?

A Yes. She said Mr. Freese was interested in talking to me.

Q Did she say that Mr. Freese said anything else at the exhibition?

A He enjoyed, he liked the film, he seemed impressed with it.

Q Did she say that Freese said anything else at the exhibition?

A Not that I can recall.

Q Did you make any notes or memoranda of what she had told you took place by way of conversation or activities at that exhibition?

A No. I did not.

Q You can't recall anything else other than what you just told us?

A No. I went over to see Mr. Freese subsequent to that myself.

Q We will get to that. Did she tell you how long she remained with Mr. Freese?

A No.

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Q Did she tell you whether or not anyone other than she and Mr. Freese were present at the exhibition?

A No, I can't recall that.

Q Where does Marie Maas live?

A That I don't know. I haven't seen her since ten years.

Q Where did she live then?

A She lived in New Jersey, I believe, or Brooklyn; I'm not certain.

Q What business was she engaged in?

A She was employed in a civilian capacity at the Army Post in Long Island.

Q She was not in the film business?

A Yes, she was. She was in a civilian capacity at the Army Post.

Q Working in films?

A Yes, in the film division; yes.

Q Had she been employed outside of the military?

A I believe she made experimental films, from what I understand.

Q You say she didn't tell you how long she remained with Mr. Freese?

A Not that I recall. I don't recall the details of our discussion with Mrs. Maas.

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Q Did she tell you that she said anything to Mr. Freese, that you recall?

A Not in detail.

Q Anything at all?

A She said that I should, that he would like to see me, and I went over to see him.

Q I am asking you what she said?

A I don't recall what she said at that time.

Q Did she tell you that she said anything to Mr. Freese?

A Yes. She said he liked the film.

Q I am saying what she said. What did she tell you she said to Mr. Freese, not what he said?

A She told him I was the young man who had made this film, and that she thought that the company would be interested in it because it involved the product of the American Tobacco Company, and he represented American Tobacco Company at that time, or the film division, I should say.

Q Where did you get that information?

A I believe Mrs. Maas called and found out that Mr. Freese was in charge of film, the man who handled the American Tobacco Company.

Q Mrs. Maas told you that?

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A Yes.

Q You told us all of the conversations that Mrs. Maas had with Mr. Freese, as she related them to you?

A As far as I can recall, yes.

Q You made no notes or memoranda of what she told you?

A No.

Q Subsequent to the time that she saw Mr. Freese, did you have occasion to meet Mr. Freese?

A Before? No.

Q Subsequent?

A Yes.

Q When was that?

A The next day or so, I made an appointment to talk with him.

Q You called him on the phone, and made an appointment?

A Mrs. Maas told him I would like to see him. I don't recall whether I called him or the appointment was already arranged. It was within a day or two.

Q Prior to that time you had not had any written communications with Mr. Freese?

A No.

Q Or anyone at Foote, Cone & Belding?

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A No. I didn't know anyone there.

Q You then came in to see Mr. Freese some few days after the meeting, that you say Mr. Freese had with Mrs. Maas?

A Yes.

Q Again at the Foote, Cone & Belding office, Mr. Freese's office?

A Yes.

Q Did you bring your film with you at that time?

A I don't believe so. I am not certain. He had just seen it.

Q Where was it? With Mrs. Maas?

A No, I had it.

Q Who was present at the time you came in to see Mr. Freese?

A As far as I can recall, I believe we were alone.

Q At his office?

A Yes.

Q At Foote, Cone & Belding?

A Yes.

Q How long did the meeting take place that you had with Mr. Freese?

A How long? I don't recall exactly the length.

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Q Was it a few minutes, several hours?

A Maybe a half hour. I don't recall.

Q Can you tell us now, as best you can recollect, what you said to Mr. Freese, at this meeting, and what he said to you?

A Yes. I can recollect. I was quite interested to know whether he would be interested in purchasing it, on behalf of the American Tobacco Company. Or however they arrange to purchase a film of that nature. I believe I inquired into the details of it, if that were possible, and Mr. Freese didn't feel that the film would be of any use at that time because they were not on television, they had no advertising on television. I believe he said they had just completed the SALESMAN'S MOVIE.

Q Did he tell you about the SALESMAN'S MOVIE?

A So far as I can recall, he showed the film to me.

Q And as you said before that was the film you saw yesterday at American Tobacco, which we call the SALESMAN'S MOVIE?

A Yes, parts of it only.

Q Parts of it only you say?

A I don't recall the whole thing.

Q You don't recollect everything. You recollect

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certain parts of it?

A I recollect specifically the farmer, with the tobacco leaf.

Q Do you recollect any of the stop motion or animated photography?

A I recollect the cigarette sequence with the farmer.

Q What was that sequence?

A I believe the farmer is standing in the field with a tobacco leaf, and a package opens and some animated cartoon cigarettes come out of the package and go into the tobacco leaf.

Q And spell out L.S.M.F.T.?

A Spell out L.S.M.F.T.

Q You say Mr. Freese wold you he wasn't interested in buying the film for the account of American Tobacco Company?

A Yes.

Q What else was said by you or by Mr. Freese at this meeting?

A We had a general conversation about -- we discussed my film. I told him I had approached it in a subtle manner, that I didn't use a narration blurb because I thought television, being essentially a visual medium, I didn't think one needed to hammer as much as they had

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been hammering on radio. And I recall Mr. Freese disagreed with that, and then the conversation turned to the possibility of animating the farmer, the Genii, I believe, he was called at that time.

Q The what?

A The Genii. He is referred to as a Genii, if I recall correctly.

Q Did you tell Mr. Freese the price you were willing to sell him the film for?

A We didn't get as far as that. As I recall, we didn't get to discussing the price.

Q What was the price you had in mind?

A Well, I wasn't sure. I didn't have any specific price in mind.

Q What else was said by you or by Mr. Freese at this same meeting that we are discussing?

A Well, we discussed, again, the possibilities of using this figure, the figure, the Genii, and animating him, and I believe I recall we discussed doing the cigarette commercial or re-doing the cigarette commercial, part of the SALESMAN'S MOVIE, I don't remember just what it was connected with.

Q And you discussed with Mr. Freese the possibility of Foote, Cone & Belding retaining you on

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behalf of American, to make an animated or stop motion movie?

A Yes. And a general discussion.

Q What was said about that?

A Well, Mr. Freese said that there was a company, Valentino Sarra's organization was just starting going into the film commercial business, the motion picture end of it, starting a unit to make motion picture commercials.

Q Could you place that date, as to when this meeting took place with Mr. Freese?

A Not exactly, no.

Q You place it in 1946?

A It was either late '45 or early '46.

Q In other words, the last two months of '45 or the first two of '46?

A Yes. Somewhere within that.

Q Go ahead.

A He suggested that I talk to Mr. Cullen Landis over there, at the Valentino Sarra organization. And if I recall correctly, he said with the possibilities of subcontracting, through the Sarra organization.

Q Mr. Freese told you that there was a possibility that Sarra would hire you as a subcontractor?

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A There was a possibility, yes.

Q To make animated films?

A To work on commercials of this nature. We were to discuss it.

Q Namely what, the animation of the Genii?

A The animation of the Genii, and other products that he had in mind.

Q What other products?

A I recall cigarette display but I can't recall anything specific. The Genii stands out in my mind at the moment.

Q Other than the Genii you have no specific recollection of what he suggested you might do as a sub-contractor of Sarra Inc.?

A No.

Q What else was said between you and Mr. Freese at this meeting?

A I don"t recall any of the other details. I believe I told him I would go over and see Mr. Landis, which I did, two or three days later.

Q What work in the commercial film field were you doing at that time you saw Mr. Freese?

A I was just beginning, just awaiting discharge from the Army.

Q You were interested in getting started on your

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own?

A I was interested in getting started on my own, yes.

Q And you were looking for work basically?

A Well, no. Basically I wanted to sell this film because I thought that would give me a start.

Q And when you learned that you could not sell that film, you then indicated to Mr. Freese your interest in finding work?

A It all came out in a general discussion.

Q Am I correct in that?

A I didn't say I was specifically interested in finding work.

Q What were you interested in?

A Well, I wanted to explore the field in New York.

Q For what purpose?

A To see if I could pick up some commercials on my own.

Q Well, that would be work, wouldn't it?

A Well, I guess so; yes.

Q What else do you recall of your conversation with Mr. Freese, which you said or he said, other than you have already told us?

A That was the basic part of it, that I can recall. As I say, I went over to see Mr. Landis, a couple of

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days later.

Q Where did you see the SALESMAN'S FILM? In Mr. Freese's office at that meeting?

A I believe so. I don"t remember just when or where.

Q In other words, at his office or some screening room?

A Yes.

Q But it was at that time?

A It was around that time.

Q Did Mr. Freese give you any reasons as to why he was not interested in, as you say, purchasing Plaintiff's Exhibit 3-A for identification?

A Well, as I recall, I told him I had made it for television, and that I don't believe at that time they were going into television advertising to a very large degree, and they just finished the SALESMAN'S MOVIE, and he felt that he could not use the film.

Q Up to this meeting, had you had occasion to have any written communications with Mr. Freese or anyone else at Foote, Cone & Belding?

A No.

Q Did Miss Maas tell you that Mr. Freese was interested in buying your film?

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A Not that I recall directly. They said he was interested in talking to me.

Q About what?

A As far as I can recall, he said he was interested in talking to me, so I assume it would be in connection with the picture.

Q She didn't tell you what he was interested in talking to you about?

A Not specifically.

Q You did say, did you not, that Miss Maas was acting as your representative when she first called on Mr. Freese?

A Not in an official capacity. It was more or less a friendly contact.

Q You had authorized her to do that, did you not?

A Yes. I saw no reason why she should not.

Q You authorized her to call on Mr. Freese and exhibit the film to him?

A Yes.

Q Did Miss Maas tell you who Mr. Freese was, prior to attending that meeting?

A Yes. She said that he was the film representative, or in the film division of Foote, Cone & Belding, who

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in turn represented the American Tobacco Company.

Q You were anxious to meet him, I presume, were you not?

A Yes. I had this picture, and I felt here was an opportunity to sell it.

Q Even in addition to the possibility of being able to sell your film, for business reasons, you would be interested in meeting Mr. Freese, knowing the position he enjoyed at Foote, Cone & Belding?

A Yes.

Q You told us everything you can recollect about the meeting that you had with Mr. Freese now, is that correct?

A That is correct.

Q Now, is that correct? Everything that occurred and everything that was said?

A Yes, but --

Q Did I interrupt you?

A I wanted to state, the main thing was that he suggested that I go over and talk with Mr. Cullen Landis, on the possibilities of subcontracting, and making future commercials.

Q Relating to the Genii?

A Relating to the Genii.

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Q What--

A And it involved cigarettes as well. That was all part of the same package.

Q Did he advise you that Sarra Inc. was apparently doing film work for Foote, Cone for American Tobacco?

A No. Not that I recall.

Q Did he advise you that they had ever done commercial film, motion picture work, for American Tobacco or for Foote, Cone & Belding?

A Not that I recall. I assumed that.

Q You assumed that but no one advised you of that fact?

A No.

Q Did you ever hear of Sarra Inc. prior to that meeting with Mr. Freese?

A No, I don"t recall that I had.

Q Did you ever hear of Mr. Cullen Landis?

A No.

Q Valentino Sarra?

A No.

Q Did you know what business they were engaged in prior to that meeting?

A I was told that they were engaged in commercial

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photography.

Q Prior to the meeting?

A Not prior to the meeting. During the meeting.

Q You say you were told that they were engaged in commercial photography, in New York City?

A Yes.

Q Were you told that they were engaged in commercial film activity with respect to motion picture films here in New York?

A They were starting a unit to make commercial motion pictures.

Q Mr. Freese told you in early 1946 at this meeting with Sarra Inc. that they were just starting to make commercial films?

A Possibly it had to do with animated television films.

Q Which would include stop motion technique as well?

A I don't recall exactly what it was. Whether it was directly with motion pictures or animation.

Q When you say motion pictures, you mean something other than animation?

A Regular commercials where someone holds up a package. But I was under the impression at that time that

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he was just starting out in doing motion pictures.

Q For televison?

A I don't recall any specific designation.

Q You say that Mr. Freese had not had occasion to do business with Sarra Inc. prior to that time?

A I had no knowledge.

Q He didn't say that he had or had not?

A No, he didn't.

Q But you specifically recall that he indicated that Sarra Inc. might be willing to subcontract commercial film work to you?

A Yes.

Q Of the nature you mentioned?

A Yes.

Q What did you next do following that meeting?

A I think a day or two later, I had a talk with Mr. Landis, I showed him the film.

Q Where?

A At the Valentino Sarra studio, wherever it might have been at that time.

Q In New York City?

A New York City.

Q Was it on the east or west side of town or the north or south section of town?

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A I have no idea.

Q No idea?

A No.

Q In Manhattan?

A Yes. It was in Manhattan. It was very close by.

Q Close by to what?

A To the heart of Manhattan. I wasn't too familiar with New York at that time. It was my first visit.

Q What do you consider to be the heart of Manhattan?

A Oh, up around the district where Mr. Freese"s office was located.

MR. MACKEY: Foote, Cone & Belding.

THE WITNESS: Yes. Foote, Cone & Belding.

Q And you say you went to see Mr. Cullen Landis? Had you made a previous appointment to see him?

A Yes. I believe I did.

Q When did you do that or how? By telephone?

A Yes. I think I did.

Q You have a definite recollection of having done that?

A No. I don't.

Q Prior to going to see him, you didn't address any written communication to him, did you?

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A No.

Q And this was within two or three days of the meeting that you had with Mr. Freese, that you met with Mr. Cullen Landis, at Sarra Inc., New York City?

A Yes, as I recall it.

Q Where did you meet with him? In his office?

A In his office, yes.

Q Who was present when you came in?

A I believe he was alone. I don't recall, there may have been someone else with him. He was alone when I talked with him. I believe I showed him the film alone.

Q You say when you first came into his office, you don't specifically recall whether or not he was alone or not?

A No.

Q But you know that when you commenced talking with him, just you and he were alone in his office?

A As far as I can recall.

Q That is your best recollection?

A Yes.

Q Of this meeting?

A Yes.

Q How long did the meeting last?

A Not very long.

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Harryhausen - direct

Q What is that?

A Not very long that I can recall. Maybe a half hour.

Q What did you say and what did Mr. Cullen Landis say to you?

A First of all, I introduced myself to him.

Q This is the first time that you had met him?

A Yes.

Q Or spoken or written to him?

A Yes. I believe I mentioned Mr. Freese's name, I am not quite certain of the details of the introductions to him, but I showed him the film.

Q In his office?

A I showed him my film. I think it was -- not in his office, no. It was sort of a semi-auditorium, a larger office.

Q It had screen facilities?

A It had screening facilities, yes, sir.

Q Like a conference room?

A Possibly a conference room.

Q What is your best recollection?

A I just know it was a larger room. It had screen facilities.

Q With seats similar to a small theatre in it?

A No. As far as I can recall it was not a regular

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theatre room. It was an office converted, possibly he brought the projector in and put it on the table. I don't recall.

Q Prior to going to this room, which you just are describing, have you completed telling us of the conversation that you had with Mr. Cullen Landis, what you said and what he said?

A We had a discussion on the possibilities of working out animation films. Of course, he wanted to see my film first.

Q What was said? You say you had a discussion. That is a conclusion.

A Well, first we ran the film. I told him I had a film, and --

Q Who ran the film? You and Mr. Landis?

A The first time, yes. It may have been a projectionist, I'm not certain.

Q In other words, it was just you and Mr. Landis present and possibly a projectionist, at the first exhibition of Sarra Inc., of Plaintiff's Exhibit 3-A for identification?

A Yes.

Q How many times did you run it over with just those people present?

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A Mr. Landis then asked me to run it over again for Mr. Sarra.

Q For whom?

A For Mr. Sarra.

Q Mr. Valentino Sarra?

A Yes. And he also asked if he could bring in the heads of the department, I think, he referred to them --

Q Did he mention them by name?

A No. He may at the time, but I don't recall. There were quite a few people, three or four, rather 10 or 12 people --

Q What did you say to that?

A -- came in and out. I said yes.

Q What did he do? Call them on the phone and ask them to come in?

A They came in. I don't know how he communicated with them.

Q How many people were there then, prior to the second exhibition?

A Prior to the second exhibition?

Q Yes. Prior to the commencement of the second exhibition of Plaintiff's Exhibit 3-A for identification?

A Possibly 12.

Q 12 people?

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A 12, 15, I'm not certain.

Q All of whom you understood were employed by Sarra Inc.?

A Yes.

Q You recall the names of no one in that room other than Mr. Cullen Landis and Mr. Valentino Sarra?

A That is correct.

Q Could you give me a description of what Mr. Valentino Sarra looks like?

A No. I only met him for an instant.

Q No recollection?

A He came into the room, and I met him, and he had seen the film, and he complimented me on my film, and that was the only contact I had with him.

MR. WHEELER: You had no conversation with Sarra at all?

THE WITNESS: Not that I recall. Just a brief hello. He made a comment complimenting my film.

BY MR. ELDRIDGE:

Q But you could not describe Mr. Sarra's physical appearance?

A Physically? He had, I know, a good solid head of black hair, I believe. I could not describe him. I thought at the time he was a tall man. I am not certain of that.

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Q You thought of him as being a tall man?

A Yes.

Q Is he taller than you are?

A About the same height I would say.

Q How tall are you?

A Six, one.

Q Do you recall his approximate weight? Was he a thin man or a heavy-set man?

A I would not call him heavy-set. Medium build.

Q 180, 185 pounds?

A Yes. I don't recall in detail, frankly.

Q Do you recall whether he spoke with or without an accent?

A No, I don't. I wasn't in any long conversation with him.

Q That was the only time that you ever met Mr. Valentino Sarra?

A That is correct.

Q The conversation that you had with him is the only conversation you ever had in your life with him?

A That is correct.

Q Do you recall the exact language of what you termed to be the complimentary phrase that Mr. Sarra made to you?

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A No, I don't.

Q Do you recall the substance of it?

A It was a favorable comment. He said it was a very good film. A very interesting film. I don't recall the rest.

Q The substance was that it was a good and interesting film?

A Yes.

Q How many exhibitions of the film took place before the 12 or 15 people assembled in the room at that time?

A I seem to recall two exhibitions.

Q That would make a third one for Mr. Cullen Landis?

A Yes.

Q At which you were physically present?

A That is correct.

Q Other than Mr. Cullen Landis, and Mr. Valentino Sarra, did you have a conversation with anybody else in the room?

A Not that I recall.

Q What happened after the third exhibition of the film?

A I am not certain whether we had a discussion after the

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exhibition or whether I made an appointment to come back to his office again, I don't quite recall.

Q Meaning Mr. Cullen Landis?

A Mr. Cullen Landis, yes.

Q After the screening you took the film and went back to Mr. Landis' office?

A No. I took the film but I am not sure whether we had a discussion at that time or a subsequent time.

Q You have no recollection of what you said or what he said following the exhibitions?

A Yes. We discussed as far as I can recall, we discussed the possibilities of making commercials of this nature. I had shown him three films, I forget to --

Q You showed him three films?

A Yes.

Q You mean Plaintiff's Exhibit 3-A for identification, plus two additional films?

A Plus two additional films.

Q What were the other two films?

A One was referred to as a dinosaur film and I guess it was just the dinosaur film.

Q So one other?

A So it was one other.

Q What was the dinosaur?

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A It was an experimental piece of film which showed figures in animation.

Q How long did it run?

A About two months, three months.

Q Something on the order of the KING KONG films that you made?

A Yes.

Q By that I should say, MIGHTY JOE YOUNG?

A It was experimental work with prehistoric animals.

Q Was that in color and 16 mm films?

A Yes, it was.

Q Did that have a sound track?

A Yes, it did.

Q Music?

A I don't recall whether there was music in it at that time.

Q Do you have that film?

A It is in rather a disintegrated condition. I believe I haven't used it for a good many years.

Q Where? In California?

A Yes.

Q Have you told us now of all the conversation that you had with Mr. Cullen Landis at this meeting?

A Yes. We discussed, as I said before, the possibilities

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of making animated cigarettes, and various commercials, and animated products, and under the basis that I would either be employed with them, or working as a subcontractor.

Q Did he tell you they were doing any of that work at that time?

A Not that I recall.

Q Did you see any examples of that type of work while you were over there?

A No.

Q Is there anything else that you recall that you discussed with Mr. Cullen Landis, at that meeting?

A Mainly we discussed the possibilities of subcontracting, and I believe I told him that I didn't particularly want to subcontract, because I was just getting out of the Army, and I wanted to work on my own. So then I decided to go back to the West Coast.

Q Did Mr. Landis indicate to you that Sarra Inc. had done any commercial film work for Mr. Freese, or rather for Foote, Cone & Belding?

A Not that I recall.

Q How many of the exhibitions did Mr. Valentino Sarra see?

A Well, he was in and out of the room. I am not certain whether he saw the second one or not. He saw the

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second one, but I am not certain of the third.

Q When you say in your complaint that Mr. Valentino Sarra studied and examined it in detail, that is what you had reference to, this meeting?

A Yes.

Q By it, I mean the film?

A The film.

Q What happened next?

A I went back to the West Coast, and --

Q Without seeing Mr. Landis again?

A No. I believe I told him I intended to go back to the West Coast, and that possibly I would be back, but I didn't want to pursue the idea of subcontracting, for the reason I stated before.

Q You weren't interested in employment either?

A No.

Q What were you interested in, that Sarra Inc. might have to offer you?

A I wasn't sure at the time when I went over there. I was exploring. I didn't quite know the connection between Foote, Cone & Belding and Sarra.

Q What did you learn at that time was the connection between Foote, Cone & Belding and Sarra Inc.?

A I assume they wanted me to subcontract.

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Q Which you say you weren't interested in?

A Which I wasn't interested in.

Q Yes?

A So I decided to forget about the whole thing at that time.

Q And what was the purpose of going to Sarra Inc. following your meeting with Mr. Freese?

A I didn't know quite what to expect until I got there, and talked with them.

Q Did you not tell us that Mr. Freese suggested that you might be able to get some contracting work with Sarra Inc.?

A Yes. But I was still turning over various possibilities in my mind, because I had my ticket to go back to the West Coast, and I finally decided against it.

Q When did you leave for the West Coast?

A That was in March, I believe, the early part of March.

Q 1946?

A 1946, yes.

Q Subsequent to that meeting with Mr. Cullen Landis, did you ever have occasion to meet him again?

A No.

Q Did you ever have occasion to address any written communications to Mr. Cullen Landis?

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Harryhausen - direct

A No, I did not.

Q Did you ever address a written communication to Sarra Inc. or any of its employees?

A No.

Q Have you caused any representative of yours to so address a written or oral communication to these people or entity?

A No.

Q Not at any time?

A No.

Q When did you appoint Charlotte Knight as your representative in New York?

A It was just before I went back to the West Coast.

Q Sometime prior to the early part of March, 1946?

A Yes. A week or so that I had my ticket --

Q You gave her the only print that you had of the film?

A Yes.

Q What instructions did you give her?

A Well, I told her that if there was anyone she was interested in contacting -- she admired my work for a good many years, I had known her on the West Coast, and she said that she felt that I had something very valuable there, and that she would be interested in contacting various agencies,

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and for the purpose of getting some film work, commercials to do.

Q In other words, you authorized her to exhibit your film as a sample of your work to ad agencies for the purpose of trying to get commercial film work for you?

A Yes.

Q For which she would receive a commission?

A Yes.

Q That was a gentleman's agreement, not in writing?

A That is right.

Q When did you next come to New York City?

A I imagine it was 1950. I don't recall exactly.

Q Sometime in 1950?

A I think it was 1950. Yes.

Q Do you recall the month or what part of the year?

A No, I don't.

Q When did you next have occasion, if ever, to address an oral or written communication to Sarra Inc. or any of its employees?

A I never had another occasion to address a communication.

Q Neither did your representative, Miss Knight, or anyone else on your behalf, to your knowledge?

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A Not to my knowledge, no.

Q When did you next have occasion to send or receive an oral or written communcation to or from Mr. John Freese of Foote, Cone & Belding?

A That was approximately a year and a half later. I would place it the latter part of 1947.

Q That would be November or December?

A November, probably the early part of November.

Q And between the late part of 1945 and early 1946, and November, early November of 1947, did you or any representative of yours, to your knowledge, have any oral or written communications with any of the defendants named in this action?

A Prior to -- what date was that?

Q The dates were between late 1945 and early 1946, and early November, 1947.

A No.

Q Calling your attention to Paragraph Three of your complaint, line 6, the words "at the suggestion of said defendants," to whom do you have reference there?

A Paragraph Five?

Q Three.

A That was what specific line?

Q Six. The last six words on line six.

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A That would be John Freese.

Q Paragraph Three of your complaint, commencing at line 8, you say that you were subsequently advised by these defendants. Who are these defendants? Again, Mr. Freese?

A Again Mr. Freese yes.

MR. MACKEY: It says"these," and you say Mr. Freese.

THE WITNESS: Where is that?

MR. ELDRIDGE: It is line 9.

MR. MACKEY: I think that is more or less a question of law, principal and agent.

MR. ELDRIDGE: This is a question where you have five or six defendants. It says defendants. You don't know which defendants you are referring to.

MR. MACKEY: It means all defendants.

MR. ELDRIDGE: I am quite certain if you look at that paragraph you would not make that statement.

Q Whom did you have reference to?

MR. MACKEY: I don't see these defendants, and I don't see said defendants.

MR. ELDRIDGE: Line 6, Paragraph Three, the fourth and fifth words, "these defendants."

MR. MACKEY: You said line 6 and line 8.

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MR. ELDRIDGE: That was in a previous question, Mr. Mackey.

BY MR. ELDRIDGE:

Q In other words, Mr. Harryhausen, who advised you, as indicated in that sentence which commences at line 8, "Plaintiff was subsequently advised..."

A I don't quite understand this.

Q You say you don't understand your complaint?

A It is a legal thing.

Q Are you looking at the same sentence that I am, commencing at line 8, Paragraph Three. "Plaintiff," meaning you?

A Yes.

Q "...was subsequently advised by these defendants," and you can read the sentence. I am asking you, who advised you of the material following thereafter?

MR. MACKEY: I object to the question on the ground that it calls upon plaintiff to interpret a legal document which he did not draw and which to my mind is sufficient as a matter of law.

MR. ELDRIDGE: Do you want him to answer it?

MR. MACKEY: I don't want him to stay here a week. He can answer he doesn't know.

Q Answer it if you can.

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A I don't know.

Q You don't know?

A No.

Q You have no recollection that any defendant advised you of that, is that correct?

A What was it?

Q Where I used the word "complaint," I am referring to the amended complaint.

A I don't know. I don't quite understand the wording of it. I would have to --

Q Subsequent to your meeting with Mr. Cullen Landis, which you just described, did any defendant advise you as follows: Plaintiff's Exhibits 3-A, had been brought to the attention of the American Tobacco Company?

A I can't answer that question.

Q You mean you decline to answer it?

A No.

Q Or you have no information and knowledge?

MR. WHEELER: Do you understand the question, the last question that Mr. Eldridge put to you?

THE WITNESS: Yes, I believe I do.

Q You say you cannot answer that question?

A I don't quite know what the wording is.

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Q The wording does not appear in the complaint, except as I may have incorporated in the question. I would suggest that the reporter re-read my question to you, and you tell me if you understand it.

(The question was read.)

MR. MACKEY: You mean personally?

BY MR. ELDRIDGE:

Q Do you understand the question?

A Will you please read it again.

(The question was re-read.)

Q Do you understand that?

A Does that mean immediately after my showing with Cullen Landis?

Q At any time subsequent thereto, meaning subsequent to the meeting with Cullen Landis, which you just described.

A I don't quite know how to answer it.

Q Do you understand who the defendants are in this action?

A Yes, I do.

Q Do you understand that "subsequent" means at some time after the meeting with Cullen Landis?

A Oh, yes.

Q Do you understand what the word "advised"

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means?

A Yes.

Q Were you or were you not at some time subsequent to the meeting with Cullen Landis, advised that the film 3-A for identification, had been brought to the attention of the American Tobacco Company?

A Would that be after --

Q Subsequent to the meeting with Cullen Landis.

MR. MACKEY: Up to date. Up to date.

A Well, it would be in 1947, when Mr. Freese wired.

Q That would be when in 1947?

A I believe that would be whenever the wire occurred, in November.

Q Subsequent to the meeting with Mr. Cullen Landis, which we have been discussing?

A Yes.

Q Which we have discussed?

A Yes.

Q Did any defendant, and if so, please identify the defendant or defendants, advise you that the film, 3-A for identification, would be used by the American Tobacco Company, if you would permit Sarra to undertake its production and you would act as a subcontractor in the manufacturing of the film?

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A That isn't quite the way it was worded. It all tied in with the idea of subcontracting through Sarra, and re-making a Lucky Strike package, that I spoke of before, the farmer, the Genii.

Q Are you going back to your meeting now with Mr. Freese?

A Yes.

Q I am talking about subsequent to your meeting with Mr. Cullen Landis, which you said occurred after your meeting with Mr. Freese?

A But this was the second after the wire.

Q What is the wire that you are making reference to?

A Mr. Freese sent me a wire, in 1947.

Q In what?

A In 1947.

Q In November?

A In November. Asking for the film.

Q Did you retain a copy of the wire?

A No. It is in my files somewhere but I haven't been able to find it.

Q Have you ever advised your attorney of the contents of the wire?

A Yes, I have.

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Q Where is the wire now, in California?

A It must be in California, yes.

Q Do you recall the contents of the wire?

A Yes, I do.

Q What did it say, to the best of your recollection?

A To the best of my recollection it said, it was very brief, it said, "Think I have deal. Please send cigarette picture."

Q You are certain that wire was sent by Mr. Freese?

A It was signed John Freese, yes.

Q His name appeared at the end of the wire?

A His name appeared at the end of the wire.

MR. ELDRIDGE: I would ask that you produce, Mr. Mackey, the original wire.

MR. MACKEY: I haven't got it.

MR. ELDRIDGE: What is that?

MR. MACKEY: I haven't got the original wire. I only have what Mr. Harryhausen told me was a copy of it.

A I have been looking for the wire, and I haven't been able to find it.

Q When was the last time you saw it?

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A Around 1950, I guess it was.

Q 1950?

A Five years ago, four years ago, it was in my files. I remember cleaning out my files and running across it. I had quite a number of places to look.

Q That was 1950?

A Yes.

Q You haven't been able to locate it since?

A No.

MR. ELDRIDGE: In the event you are able to locate that wire, is it agreeable, Mr. Mackey, that the original will be forwarded by your client to you?

MR. MACKEY: Oh, yes.

MR. ELDRIDGE: And a true copy will be given to defendant's counsel, and the opportunity to inspect the original wire.

MR. MACKEY: Yes, surely.

THE WITNESS: Yes.

BY MR. ELDRIDGE:

Q You say you received this wire from Mr. Freese?

A Yes.

Q At or about an early date in November, 1947?

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A Yes, that is correct.

Q What did you do when you received the wire?

A I called my East Coast representative that evening.

Q Charlotte Knight?

A Charlotte Knight. And I told her that I had received a wire from Mr. Freese, from Foote, Cone & Belding, and told her to deliver the film to him, that I was under the impression that I had another possibility of a sale for that film. I didn't say specifically why he wanted it.

Q To your knowledge did Miss Knight deliver the film to Mr. Freese?

A Yes, she did. She delivered the film to him the following day, following my phone call.

Q When did you call? The day you received the wire?

A I called, as I recall, the day I received the wire.

Q Did she personally deliver the film to Mr. Freese?

A She personally delivered the film to Mr. Freese. And she had a conversation with him, I believe.

Q Where? At his office?

A At his office.

Q She told you this?

A Yes, she did.

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Q You weren't present?

A I was not present.

Q What did she tell you she said to Mr. Freese and Mr. Freese said to her, on delivery of this film?

A She told me that Mr. Freese had asked her if we would mind, if her company would mind, working as sub-contractors to Valentino Sarra, who now had a working unit on the West Coast.

Q Who had a working unit on the West Coast?

A Valentino Sarra.

Q You mean he, individually, or do you mean his company, Sarra Inc.?

A I don't know. Probably --

Q You have no recollection of which?

A I have no recollection. There was no specific identification made.

Q Is that all that she told you Mr. Freese said?

A She said that she had recalled, and Miss Knight replied that she had recalled that Mr. Freese had asked me to subcontract before, and that I wasn't interested at the time, and she didn't know why but she would ask me again. And she may have had some other conversations,

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which I don't know, I have no recollection of.

Q No knowledge of?

A No knowledge of. Then Mr. Freese, she told me, that Mr. Freese, before they departed, she said please don't, -- rather, don't tell Mr. Harryhausen about subcontracting until after I have shown the film to the client, which was the American Tobacco Company.

Q Was there anything else that you recall now that Miss Knight told you, with respect to the conversation between Mr. Freese and her, of which we are speaking?

A Yes. She said that Mr. Freese was interested in taking advantage of my creative ideas.

Q He was what?

A Interested in taking advantage of my creative ideas, those were her words.

Q Anything else?

A That is all that I can recall.

Q And what did you understand her to mean when she related the statement that Mr. Freese was interested in taking advantage of your creative ideas?

A Oh, there was something I omitted, I am sorry, and that it would be difficult to deal with him on the West Coast.

Q It would be difficult to deal with him?

A To deal with him out on the West Coast.

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Q Meaning whom?

A With Mr. Harryhausen. He told, Mr. Freese told Miss Knight that it would be difficult dealing with me on the West Coast.

Q And yet you say he suggested that Sarra Inc. subcontract or work with you on the West Coast?

A Yes. I don't know what continuity these words had.

Q You recall her telling you both of those things?

A I recall her telling me both of those things, yes.

MR. MACKEY: I am going to ask for an adjournment now. It is 20 past five.

(Whereupon, at 5:20 o'clock p.m., the examination was adjourned until Saturday, April 13, 1957, at 10:30 o'clock a.m.)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

RAY HARRYHAUSEN, :

Plaintiff, :

-against- :

AMERICAN TOBACCO COMPANY, a corporation, SARRA, INC., a corporation, FOOTE, CONE & BELDING, a corporation, VALENTINO SARRA, and JOHN FREESE, :

Defendants. :

- -X

488 Madison Avenue,
New York, N. Y.

April 13, 1957,
10:30 a. m.

EXAMINATION OF
RAY HARRYHAUSEN
(CONT'D)

BORAK REPORTING SERVICE
CERTIFIED SHORTHAND REPORTERS
154 NASSAU STREET
NEW YORK 38, N. Y.

WORTH 2-5057
NIGHT PHONE HUNTER 7-6474

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

RAY HARRYHAUSEN, :

Plaintiff, :

-against- :

AMERICAN TOBACCO COMPANY, a corporation, SARRA, INC., a corporation, FOOTE, CONE & BELDING, a corporation, VALENTINO SARRA, and JOHN FREESE, :

Defendants. :

- x

CONTINUED EXAMINATION BEFORE TRIAL of RAY HARRYHAUSEN, the plaintiff, taken before a Notary Public of the State of New York, at the office of Coudert Brothers, Esqs., 488 Madison Avenue, Borough of Manhattan, City, County and State of New York, on the 13th day of April, 1957, at 10:30 o'clock a. m., pursuant to adjournment.

BORAK REPORTING SERVICE
154 Nassau Street
New York 38, N.Y.
- - -
WOrth 2-5058

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A P P E A R A N C E S:

RICHARD J. MACKEY, ESQ.,
Attorney for plaintiff,
20 Exchange Place,
New York, N. Y.

COUDERT BROTHERS, ESQS.,
Attorneys for defendants American Tobacco Company,
Foote, Cone & Belding, and John Freese,
488 Madison Avenue,
New York, N. Y.
BY: CARLETON G. ELDRIDGE, JR., ESQ.,
Of Counsel.

JOHN B. WHEELER, ESQ.,
Attorney for defendants Sarra, Inc. and
Valentino Sarra,
39 Broadway,
New York, N. Y.

ALSO PRESENT:

JOHN FREESE

- - - -

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R A Y H A R R Y H A U S E N, the plaintiff, having previously been duly sworn, was examined and testified further as follows:

MR. ELDRIDGE: Note for the record that the same people who were present at the deposition yesterday are present here today, with the exception of Mr. Robert Jenness.

DIRECT EXAMINATION (CONT'D) BY MR. ELDRIDGE:

Q Mr. Harryhausen, prior to early November of 1947, did you or any representative of yours tell Mr. Freese that you were not interested in any contracting work from Sarra, Inc., or any other film producer?

A Subcontracting work?

Q Yes, sir.

A Miss Knight, as I recall -- this was prior to --

Q Prior to early November, 1947, when you say you received a telegram from Mr. Freese.

A I don't recall if anything was said about that.

Q You have no recollection at all?

A No recollection.

Q You made no notes or memoranda which would serve to refresh your recollection on that point?

A No.

Q Mr. Harryhausen, why wouldn't you be interested in subcontracting work from a film producer, such as Sarra,

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Inc., or any other major film producer?

A Well, at the time I was very much interested in getting some business for myself.

Q You mean directly from an advertising agency?

A Yes, directly.

Q What would be the basic difference in your operation in the form, one, of getting work directly from an agency, or the other, in the form of having it subcontracted?

A Well, when you go through a subcontracting situation you have all your major credit, and everything that is produced, goes to the credit of your original contracting concern, and I was trying to establish an animation unit of my own, rather than work through a major concern.

Q The question of credits that you would receive in the course of the subcontracting arrangement to produce films would be a matter of agreement between you and the party making the subcontract, would it not?

MR. MACKEY: I object to that as hypothetical and as not proper form.

MR. ELDRIDGE: Go ahead and answer, Mr. Harryhausen.

THE WITNESS: Would you read that again, please?

(The question was read)

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A That I don't know.

Q Customarily, it would be, would it not?

A Usually, when you subcontract, you are more or less an employee or under -- I don't quite know how to express it, but a separate contracting concern.

Q The terms and arrangements you would receive from the film producer would be a matter of negotiation between you and the film producer, would it not?

A It is quite possible.

Q It is customarily so?

A I don't know. It wasn't in my case. I felt I wanted to get into business on my own, and deal directly.

Q You never had any negotiations with a film producer by way of subcontracting at that time, did you?

A No negotiations, no.

Q I believe you said yesterday -- and correct me if I am wrong -- that the purpose of Marie Maas's calls on Mr. Freese was to attempt to interest him in buying your film for the American Tobacco Company, is that correct?

A Yes.

Q And she went there and saw Mr. Freese with your express authorization, isn't that correct?

A Yes.

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Q Are you certain that the purpose, or one of the purposes, of her call on Mr. Freese was not to interest that agency, and its accounts, in doing film work directly with you, you being one who was about to leave the army and interested in getting into film production?

A That would be a subsequent interest of mine, but I felt I had a completed film, and that was my first interest, to see if that would be acceptable to the American Tobacco Company.

Q Your interest would be dual in nature, would it not?

A The other was an afterthought, after the first project didn't work out.

Q That was a thought in your mind, nevertheless, at the beginning, was it not?

MR. MACKEY: I object to what thoughts were in his mind. They are not proper, and it is not proper questioning.

Q You were interested, even when you sent Mrs. Maas to see Mr. Freese, in seeing whether or not film work could be contracted to you from that agency?

A Not immediate. That was not my immediate idea.

Q You had no interest in that at that time at all?

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Harryhausen - direct

A I wasn't quite sure what was going to happen. I wanted to see if they were interested in my picture.

Q Did you have any interest in that aspect?

A Not that I can recall.

Q Your calls on other advertising agencies, other than Foote, Cone & Belding, were for that express purpose, were they not?

A Yes, later on I decided that was the thing to do, because this film was not sold.

Q When you first had occasion to meet Mr. Freese, in 1946, some few days after Mrs. Maas called you, did you express any interest to Mr. Freese in getting film work for yourself?

A It seems to me it came up in general conversation after he had said that he wasn't interested in taking my film.

Q You did express such an interest?

A We discussed the Genii, as stated yesterday, and the possibilities of re-doing the cigarette picture, as I recall. There were several discussions. There was a discussion in general, but I can't recall the details of the discussion.

Q You had received no knowledge from Mrs. Maas as to whether or not she indicated that you had such a

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desire to do film work directly through Foote, Cone & Belding?

MR. MACKEY: I object to that. There is no evidence Mrs. Maas had any authority to tell what Mr. Harryhausen intended to do.

MR. KLDRIDGE: Off the record.

(Discussion off the record)

BY MR. KLDRIDGE:

Q My question basically, Mr. Harryhausen, is whether or not Mrs. Maas ever told you whether she discussed an interest you might have in doing film work for any of the accounts of Foote, Cone & Belding.

A Not that I recall.

Q Recalling, if you will, your testimony of yesterday, I believe toward the end of the day you said that you had told us all of the written or oral communications you or any of your representatives had with any of the defendants up to the time you say you received a telegram from John Freese. That is correct, is it not?

A Up to the time --

Q Up to the time you received a telegram, you say, from John Freese.

A Could you repeat the question, please?

(The question was read)

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A I believe so.

Q Do you have any doubts today?

MR. MACKEY: I object to that on the ground he has answered the question.

THE WITNESS: Can I hear that question again, please?

(The question was read)

A I believe so, yes.

Q You believe so?

A Yes.

Q You then say you received a telegram from John Freese reading: "Send cigarette film. May have deal," is that correct?

A Yes.

Q That was early November, 1947?

A Yes.

Q You then advised Miss Knight to deliver the film which she had in her possession, the print, to Mr. Freese, is that right?

A That is correct.

Q Do you know how that delivery was made?

A It was made through personal contact, through Miss Knight contacting Mr. Freese. She visited his office.

Q Do you recall when that was?

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A It must have been at least a day or two after I received the wire and phoned Miss Knight.

Q Prior to her going to Mr. Freese's office, did you orally or in writing communicate with Mr. Freese or anyone at Foote, Cone & Belding?

A No.

Q Do you know if she had any conversation with Mr. Freese at the time she delivered the film to him?

A Yes, she told me the conversation she had had with him.

Q What was that?

A The substance of it was that Mr. Freese asked Miss Knight if we would mind subcontracting through the Sarra organization.

Q Subcontracting what?

A Subcontracting film work, commercial work.

Q Commercial film work for television?

A Yes.

Q Of an animated nature?

A Of an animated nature, it was understood.

Q What else did she tell you was said by herself or Mr. Freese in the course of that conversation?

A As I recall, she said that they had offices -- that she was told they had offices -- a working unit was the

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way she expressed it -- on the West Coast. And Miss Knight replied that she recalled that I had turned down a subcontracting offer before, but she wasn't sure why.

Q Before when?

A Earlier in my contacts with Mr. Freese.

Q Did she tell you that she or Mr. Freese said anything else at that meeting?

A She said that she didn't see why we should subcontract through another organization.

Q "We" meaning you?

A "We" meaning the company that we had -- when I had a studio and facilities, and the ability to do the work myself.

Q You said you had a company at that time?

A Well, it was the starting of a company.

Q Had any corporation been formed?

A No, no corporation at that time.

Q Have you, in the course of the work you say you have done as an independent film producer, worked under a corporate structure?

A No.

Q As an individual?

A No.

Q As a partnership?

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A No.

Q Can you recall anything else that Miss Knight said that either she or Mr. Freese said in the course of that early November, 1947, meeting, when she delivered the film to Mr. Freese?

MR. MACKEY: He testified to it before, yesterday.

THE WITNESS: I think I testified to it yesterday.

Q Go ahead, continue with your testimony.

A It seems to me Mr. Freese replied to her not to discuss the idea of subcontracting with me until after he had had a meeting with his client.

Q Anything else?

A I believe she told me that Mr. Freese said they would like to take advantage of my creative ideas but that it would be difficult to deal with me on the West Coast.

Q Anything else?

A I believe the conversation ended with the word from Mr. Freese that he would contact Miss Knight after he had had a showing with his client.

Q You mean a screening of the film?

A A screening of the film.

Q Do you know whether or not Foote, Cone & Belding,

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Harryhausen -direct

or the American Tobacco Company, had offices on the West Coast at that time?

A No.

Q You didn't know?

A No, I didn't know.

Q Did she say she elaborated in any way on the remark you attributed to Mr. Freese that it would be hard to deal with you on the West Coast?

A She may have, but I don't recall what the rest of the conversation was.

Q What did you understand that remark to mean?

A That I was at such a distance that it would be difficult to work something out with the great distance between us.

Q You used the phrase, that you attributed to Mr. Freese, that he wanted to take advantage of your creative ideas, is that correct?

A Yes.

Q What did you understand that to mean?

A In developing the story board, in developing the film in relation to the picture I had presented to him.

Q In other words, by that you understood --

A Working out ideas.

Q That Mr. Freese was interested in working with

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Harryhausen - direct

you if terms were satisfactory to both sides, is that correct?

MR. MACKEY: I object to that. You are trying to put words in his mouth.

MR. ELDRIDGE: I am not.

MR. MACKEY: He said in connection with the picture presented.

(The question was read)

A There was no definite interest one way or the other at that time.

Q Did you understand by that remark that Mr. Freese was interested in you as a possible film producer of television film commercials?

MR. MACKEY: I object. I understood when a remark was made in English it means what it says.

MR. ELDRIDGE: I am asking what the witness understood of a remark made by someone else.

A It could mean anything. I don't know.

Q You didn't understand that remark to mean that Mr. Freese was interested in taking surreptitious advantage of your creative ideas, did you?

A No.

Q I believe now you have told us the entirety of the conversation between Miss Knight and Mr. Freese as

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related to you by Miss Knight, is that correct?

A That is as far as I recall, yes.

Q It is your best recollection today of what Miss Knight told you of that conversation?

A Yes, it is.

Q When did you first learn that you were going to be working on MIGHTY JOE YOUNG?

A It was in early 1946. There was talk about it. And feature pictures, of course, you are never sure they are going to go through until they actually start.

Q When did you first learn that production on MIGHTY JOE YOUNG would commence in December of 1947?

A When did I learn?

Q Yes. First learn of that.

A I don't recall. This all gradually built up to it.

Q You were working on that picture in the fall of 1947, were you not?

A Yes.

Q My question was: When did you learn that it would actually go into production for the first time in December of 1947?

A As far as I can recall, it was in December.

Q Yet you were working on it steadily in the fall of 1947?

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A I wouldn't say steadily. It was off and on. There was nothing definite about the picture, as I recall, until we actually started production.

Q What were you doing in the fall of 1947 with respect to MIGHTY JOE YOUNG?

A Making sketches, as far as I can recall, working with Mr. O'Brien in general preparation.

Q In general preparation for actual production of MIGHTY JOE YOUNG?

A Yes.

Q On the payroll of ARKO?

A Yes.

Q The producer of MIGHTY JOE YOUNG?

A Yes.

Q Subsequent to the meeting with Miss Knight and Mr. Freese, which you have related to us by the information you received from Miss Knight, when did you or your representative, Miss Knight, next have occasion to have any oral or written communication with Mr. Freese, or Foote, Cone & Belding?

A There was no communication that I recall. Miss Knight, I think she said, two weeks or a week and a half later, called for the film, and she had a little difficulty in getting in touch with Mr. Freese.

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Harryhausen - direct

Q This was two weeks following that?

A Possibly two weeks. She said she called several times, and finally she was told she could pick up the film.

Q Did she say she talked with Mr. Freese?

A No, she said she had not talked with Mr. Freese.

Q Had she talked with his secretary?

A I guess it was his secretary.

Q Had you communicated with Miss Knight during the period of those two weeks following the meeting with Miss Knight and Mr. Freese?

A I don't believe so.

Q What instructions, if any, had you given Miss Knight prior to her delivery of the film to Mr. Freese?

A I told her to let him have the film, in the phone conversation. I told her about the wire. And that was about all that I recall.

Q You say that subsequent to the Miss Knight-Mr. Freese conversation, at Mr. Freese's office, on the occasion of the delivery of the film to him, that you thereafter have not received any oral or written communication from Mr. Freese or from Foote, Cone & Belding?

A No.

Q You never did?

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A No.

Q Did your representative ever indicate to you that she had received a communication from Mr. Freese or Foote, Cone & Belding?

A She said she had received no communication.

Q Did she personally call and pick up the film?

A Yes, she told me she had personally called and picked up the film.

Q Whom did she see?

A I believe she said she picked it up at the reception desk.

Q From the receipt of the telegram from Mr. Freese, which you have told us about, requesting the film, up until the commencement of this litigation in 1956, is it your testimony that you have not received any communication, be it oral or written, from Mr. Freese or any representative of Foote, Cone & Belding?

A I can't recall any.

Q From any of the other defendants in this action, or their representatives?

A No.

Q Were you not interested in determining what might be the deal as referred to in the wire which you state Mr. Freese might have had?

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A I assumed the deal fell through.

Q Upon what facts did you base that assumption?

A I had assumed in the first place that he was interested in possibly buying this film again while the television was going at a stronger rate than it had been before. And I just felt that the deal fell through, because I hadn't heard from him.

Q Weren't you interested in making any form of communication with him to determine whether or not the deal had fallen through?

A I made no communication.

Q What?

A I made no communication.

Q You weren't interested?

MR. MACKEY: I am going to object to that question whether he was interested or not.

A I was interested, yes, but I felt that the deal fell through.

MR. MACKEY: I think it was Mr. Freese's duty, after asking for the film, to notify Mr. Harryhausen.

MR. ELDRIDGE: It isn't a question about duties that we are discussing here.

MR. MACKEY: You are asking him if he was interested. He was waiting for some kind of ordinary

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courteous acknowledgment.

BY MR. ELDRIDGE:

Q In late November of 1947, approximately how many hours a day were you devoting to work on MIGHTY JOE YOUNG?

A I would say eight hours a day.

Q Thereafter, more or less time?

A When we got into the heart of the production it ran into overtime. That was in the middle of 1948, or so.

Q What was your salary at ARKO on the MIGHTY JOE YOUNG arrangement?

MR. MACKEY: I object to that. It is not proper and immaterial here and should be the subject of discovery, if you want to go on to Rule 34.

MR. ELDRIDGE: It can't be a subject of discovery in that the witness said he had no written agreement with ARKO. It can only be discovered through the lips of this witness.

Q What was your salary?

A At what period?

Q First answer in November of 1947, and then answer in December of 1947.

A I believe I was still on a retainer in November. I think it was $100 a week. I am not certain.

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Q And then in December of 1947, when you were actually in production, as you say, what was your salary then?

A I made some tests for them, and it went up to, I think it was $350 or $400 a week.

Q Did it remain steady during the entire production of MIGHTY JOE YOUNG at $300 or $400 a week?

A Yes.

Q Did you at that time anticipate that your salary would remain at that level during the year 1948?

A During the year 1948, yes, I believe so.

Q Did you, Mr. Harryhausen, or any representative of yours, to your knowledge, ever advise Mr. Freese, or any other representative of Foote, Cone & Belding, that you could not consider independent film production work in late 1947, or early 1948, because of previous commitments?

A No.

Q Do you fully understand the question?

A Would you read the question?

MR. MACKEY: He fully answered the question, and I object to asking him an implication.

MR. ELDRIDGE: The witness asked to have the question reread. I would like for purposes of the

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record to have it reread for the witness.

(The question was read)

BY MR. ELDRIDGE:

Q You understand that question, do you not?

A Yes.

MR. MACKEY: He answered it.

Q Your answer is in the negative, is that right?

A It is no, that is right.

Q Mr. Harryhausen, when for the first time were you advised by Mr. Freese that Plaintiff's Exhibit 3-A for identification had been brought to the attention of the American Tobacco Company?

A When was I first advised?

Q Yes.

A Through Miss Knight's conversation which she had with him when she delivered it.

Q Is it your testimony that it had at that time already been brought to the attention of the American Tobacco Company?

A It seems to me she stated that that was the client he intended to show it to.

Q Then you had not been advised that it had at that meeting already been brought to the attention of the American Tobacco Company?

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MR. MACKEY: You are distinguishing between him and Miss Knight?

MR. ELDRIDGE: No. My basic question was when was he for the first time advised that the film, Plaintiff's Exhibit 3-A, had been brought to the attention of the American Tobacco Company.

A I believe it was at that time, the conversation with Miss Knight.

Q Did you not say that Mr. Freese had expressed an intention at that meeting, or a desire, to show the film to the client?

A I believe those were her words, yes.

Q Then you had not at that time been advised that American Tobacco Company had seen the film?

A No.

Q I call your attention to Paragraph 3 of your amended complaint, Mr. Harryhausen, the last sentence of that paragraph, which reads: "The defendants then returned the said film to plaintiff and negotiations at the time terminated." When was that?

A That must have been after the conversation with Mr. Cullen Landis in 1946.

Q During what period of time did the defendants, or any one of them, in 1946, retain possession of Plaintiff's

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Exhibit 3-A for identification, meaning the print in existence in 1946?

A I don't recall that it was retained at that time.

Q You never let it out of your possession in 1946, did you?

A No. This must refer to 1947.

Q Calling your attention to Paragraph 4 of your amended complaint, and the last four lines of that paragraph, reading: "Upon plaintiff requesting that it be given back, or some business arrangement be entered into for its use by defendant American Tobacco Company, it was finally returned to him."

When did you request that some business arrangement be entered into for its use by the American Tobacco Company?

MR. MACKEY: I object to the form of the question because it is not clear. The complaint does not say he requested it.

MR. ELDRIDGE: It says "Upon plaintiff requesting."

MR. MACKEY: It sets forth a legal proposition and not a personal talk by Mr. Harryhausen or any agent of his.

MR. ELDRIDGE: If he didn't request, he can say

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so. I am asking when he requested. The words in your complaint say "Upon plaintiff requesting."

If someone acted on his behalf, he may so identify the person.

MR. MACKEY: It is implied when he didn't get the film back, and he had to ask for its return, or Miss Knight had to ask for its return, and got no communication from Mr. Freese.

BY MR. ELDRIDGE:

Q Do you understand the question pending, Mr. Harryhausen?

A Yes. It must be implied.

Q What is implied?

A Because I don't think Miss Knight would -- wait, just a moment.

MR. MACKEY: That is why the deal fell through.

MR. ELDRIDGE: Do you want to have a conference with your client, Mr. Mackey?

MR. MACKEY: No.

MR. ELDRIDGE: Then I will object to your remarks being made unless they are in the form of an objection.

A I don't recall Miss Knight having said she had a conversation with Mr. Freese after that time.

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Q After what time?

A After she picked up the film.

Q Again looking at the last four lines of Paragraph 4 of your amended complaint, it is a fact, is it not, that you never requested there be any business arrangement entered into with respect to the film at that time?

A Not verbally, I don't recall.

Q In writing?

A No.

Q It is also a fact that no representative of yours did orally or in writing, either, is that not a fact?

A Not that I recall.

Q You have no knowledge of that, have you?

A No.

Q In Paragraph 3, the last sentence thereof, of your amended complaint, you say that refers to the return of the film in 1947 to you, is that right?

A I believe it does.

Q The first line, commencing in Paragraph 4 of that amended complaint, says that "Thereafter in November." When in November did the "thereafter" occur?

A (No response)

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Q I suggest you read the entirety of Paragraph 4 before answering.

(Witness examines document)

A I didn't write the complaint.

Q Are you suggesting the complaint is in error?

MR. MACKEY: I submit he doesn't have to suggest anything. It is an improper question.

Q Then answer the question that was pending: When does the "thereafter" in Paragraph 4, in the month of November, 1947, and the actions related thereafter -- when in 1947 did they occur following the return of the film to Miss Knight?

MR. MACKEY: Can I see the complaint?

(Document furnished by Mr. Eldridge)

A It says 1947.

Q "Thereafter in the month of 1947" --

MR. MACKEY: Doesn't it say November?

Q "November, 1947."

I am asking you when in November of 1947 the facts related in Paragraph 4 of the amended complaint occurred?

MR. MACKEY: I submit that has already been answered and it is repetition to ask him the same thing again. It has not been answered referring to

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the complaint, but he has given the facts.

MR. ELDRIDGE: I haven't asked him a thing about the paragraph relating to the time element.

THE WITNESS: I may not understand your question.

BY MR. ELDRIDGE:

Q I am asking you if you will place the time in November of 1947 referred to in Paragraph 4 of the amended complaint, bearing in mind, as you said, the last sentence of Paragraph 3 of the amended complaint relates to the return of the film to Miss Knight some two weeks after it was delivered to Mr. Freese in 1947.

I am now asking you: In Paragraph 4 of the complaint, where you state thereafter in the month of November, 1947, certain facts as you allege them in your complaint occurred, I would like you to tell me when in November, 1947, those facts occurred.

MR. MACKEY: You are confused there. The first one is 1946, and the second one is 1947.

A When in November? You mean what specific date?

Q Yes. The early part, the late part.

A I would say the early part. The first week, probably.

Q This was subsequent to the return of the film by Mr. Freese to Miss Knight?

A This is when Miss Knight delivered the film.

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Q Calling your attention to Paragraph 3, in the last sentence, "The defendants then returned said film to the plaintiff and negotiations at the time terminated."

When is "at the time"?

A That refers to the discussion with Mr. Landis.

Q Who were the defendants who had possession of the film in 1946?

A The film wasn't out of my possession in 1946.

MR. MACKEY: I object on the ground it was fully testified the film was at Sarra's, where Mr. Freese sent it.

MR. ELDRIDGE: I am asking a simple question.

Q The last sentence says, "The defendants then returned the said film to the plaintiff and the negotiations at the time terminated." You say that refers to 1946?

A You use the term "returned."

MR. MACKEY: They had to give it back to you. You didn't show it.

THE WITNESS: I gave it to Mr. Landis to show on the projector.

Q And the negotiations you refer to in that sentence are negotiations with Mr. Landis?

A I don't recall any direct business negotiations, but

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the negotiations were started in as much as we discussed possibilities of doing various types of commercials.

Q That is what that refers to in that sentence, "negotiations at the time terminated" -- the word "negotiations" refers to your conversations with Mr. Landis in 1946?

A That is correct.

Q And the word "defendants" in that sentence refers to Mr. Landis as a representative of Sarra, Inc.?

MR. MACKEY: Of course not. I certainly object to trying to change the terminology of the language used, or to get him to say something different than it says in the complaint.

Q Looking at the last sentence, Mr. Harryhausen, in Paragraph 3 of your amended complaint, which commences with the first two words, "The defendants," who are the defendants referred to, or do you refer to all of the defendants there?

A This would have to refer to Mr. Landis.

MR. MACKEY: Mr. Landis is singular.

A (Continuing) Or the Sarra Company.

MR. MACKEY: You went there on Freese's orders, didn't you, to Landis?

MR. ELDRIDGE: Do you want to have a conversation

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with your client?

MR. MACKEY: Yes.

(Discussion off the record)

BY MR. ELDRIDGE:

Q Where you refer in Paragraph 3 of your amended complaint, the last sentence thereof, you say: "The defendants then returned said film to the plaintiff," do you refer to Mr. Landis, when you say the defendants returned the film?

A It would refer to everyone that was connected with that, yes.

Q You mean everyone connected with Sarra, Inc.?

A (No response)

Q Is that correct?

MR. MACKEY: Legally you can't separate Sarra and the American Tobacco Company, and that is our legal contention here.

It may be that as an agent Mr. Landis returned it to him, but the whole thing was managed for the American Tobacco Company by Mr. Freese sending Mr. Harryhausen to Mr. Landis in the Sarra organization under the proposition about subcontracting.

MR. ELDRIDGE: It is your suggestion, and that is what you refer to in the complaint there, that

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Sarra, Inc. was acting at that time in 1946 as an agent for the American Tobacco Company?

MR. MACKEY: Mr. Freese was the agent, and they were working through Freese. Whatever Freese did was authorized by American Tobacco, and he authorized and directed him to go to Sarra.

MR. ELDRIDGE: For and on behalf of the American Tobacco Company, that is what you meant?

MR. MACKEY: Yes, that is what I mean.

Mr. Harryhausen wouldn't understand that, because it is set forth as a legal proposition.

MR. ELDRIDGE: I can understand how Mr. Harryhausen would not understand that.

MR. MACKEY: He can just tell you that Mr. Landis showed the picture, and gave it back to him.

MR. ELDRIDGE: I will ask you then, Mr. Mackey: The word "defendants" in the last sentence of Paragraph 3 of the amended complaint refers to each defendant named in the action, is that correct?

MR. MACKEY: That is correct.

BY MR. ELDRIDGE:

Q In 1946, Mr. Harryhausen, when did the defendant, American Tobacco Company, if ever, have possession of your film, meaning Plaintiff's Exhibit 3-A

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for identification, to your knowledge?

A Had possession of it?

Q Yes.

A I don't recall they had possession of it.

MR. MACKEY: Individually or by agents?

Who in the American Tobacco Company?

THE WITNESS: I don't understand that.

Q I am asking you whether or not you know the American Tobacco Company had possession of Plaintiff's Exhibit 3-A in 1946? I do not refer to Foote, Cone & Belding, or its employees, but I refer to American Tobacco Company or its employees.

A No.

Q They did not?

A Not that I recall.

MR. MACKEY: Do you know?

THE WITNESS: No.

MR. MACKEY: How does he know what Freese did with it?

Q Did Mr. Freese, in 1946, ever have physical possession of Plaintiff's Exhibit 3-A for identification when you were not physically present?

A No.

Q Did you ever see him physically exhibit by

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projector, or physically turn over to anyone in the American Tobacco Company, in 1946, Plaintiff's Exhibit 3-A for identification?

A No.

Q In 1946, did any person in the employ of Foote, Cone & Belding, to your knowledge, ever see Plaintiff's Exhibit 3-A for identification, other than Mr. Freese?

A I have no idea who was in on the first showing, or who was with Mr. Freese at the first showing.

Q You mean the showing with Mrs. Maas?

A Yes.

Q Did you not tell us that she told you the showing took place in the presence of Mr. Freese and herself alone?

A I believe so, yes.

Q Did she ever tell you there was a showing other than that showing in 1946?

A No.

Q When did Valentino Sarra have physical possession of the film, Plaintiff's Exhibit 3-A for identification, in 1946?

A When I showed it at the Sarra organization.

Q You mean when it was there during the course of

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Harryhausen - direct

an exhibition?

A Yes. I projected it.

Q Calling your attention to Paragraph 4 of your amended complaint, the first sentence thereof, the first use of the word "defendants," to which defendants do you have reference there?

MR. MACKEY: It is the same situation. I referred to all the defendants.

Q Is that your answer, Mr. Harryhausen?

A What sentence was that?

Q The first sentence of Paragraph 4 of the amended complaint which reads: "Thereafter in the month of November, 1947, the defendants" -- I ask you, to whom do you refer by the word "defendants"?

Your attorney suggests to us that you mean all the defendants.

MR. MACKEY: That I meant all the defendants.

MR. ELDRIDGE: This isn't your claim, Mr. Mackey. It is Mr. Harryhausen's, is it not?

MR. MACKEY: Yes. I based it on what he told me.

Q Do you refer to all the defendants there, Mr. Harryhausen?

A I was dealing directly with Mr. Freese at that time.

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Q The word "defendants" there means Mr. Freese?

A (No response)

Q Is that correct?

A Well, I think it would imply also the American Tobacco Company, as his client.

Q You intended to refer to the American Tobacco Company as well as Mr. Freese by the first use of the word "defendants" in Paragraph 4 of the amended complaint, is that right?

A In the way the legal document is drawn up, I don't quite --

Q It is a simple question. Who are the defendants you are referring to, or are you referring to all of the defendants?

A (No response)

Q I merely want you to identify which of the defendants.

A It means all of the defendants.

Q You refer at that point, to which we are now making reference, to all the defendants named, is that correct?

A It must be, yes.

Q Upon what facts known to you do you base the statement that Mr. Freese at that time was acting for all

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of the defendants? What facts known to you?

A Well, his client was the American Tobacco Company, which Miss Knight told me.

Q That is one fact. What other facts?

A That is the main fact.

Q Any other facts?

MR. MACKEY: I object to this on the ground it is assuming the complaint is a recital of a conversation, whereas it is a legal document drawn by the attorney and was not prepared or signed by this man.

Q Mr. Harryhausen, did you read your complaint before it was filed on your behalf by your attorney in the U. S. District Court?

MR. MACKEY: He did not. I know.

MR. ELDRIDGE: I am asking him.

A No.

Q Did you read the amended complaint before it was filed in the U. S. District Court?

A No.

Q You say in Paragraph 4 of your amended complaint that Mr. Freese was acting, in November, 1947, when he requested your film, for and on behalf of all of the defendants named in this action. You are aware of who the defendants are in this action, are you not?

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A Yes.

Q You have told us that you base that statement of fact upon the fact that the American Tobacco Company was a client of Foote, Cone & Belding. Are there any other facts known to you upon which you base your statement that Mr. Freese at that time in making that request was acting for and on behalf of all of the defendants?

A No, there is nothing else but that.

MR. MACKEY: I object to that, and move to strike out that answer, because he never said that he made the statement in the complaint. The statement in the complaint was made to me, as his attorney, and is based on the facts recited to me by Mr. Harryhausen, and his California counsel, and does not purport to be a verbatim conversation.

You see that he is easily confused by your trying to foist the complaint on him as though he made the statements in the complaint as his own knowledge, and it is an unfair use of a legal document.

MR. ELDRIDGE: Have you completed your statement?

MR. MACKEY: Yes.

MR. ELDRIDGE: It is noted on the record.

Q Mr. Harryhausen, did you understand the question

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that I asked you to which Mr. Mackey addressed his remarks?

MR. MACKEY: If you want to know why I used that, I assumed that Sarra was connected with him because --

MR. ELDRIDGE: I am not interested in what facts are known to you, I am interested in the facts alleged by this complaint.

MR. MACKEY: I don't want to make a record here which is all wrong.

BY MR. ELDRIDGE:

Q I repeat again, Mr. Harryhausen: Did you understand the question I asked you, to which Mr. Mackey just addressed his remarks?

A Would you repeat the question, please?

MR. ELDRIDGE: Would the reporter please read the question and the answer made, and my question to you will be: Do you understand that question; and, two, is that your answer?

(The question and answer were read)

Q Now, will you answer my last two questions, which were: Do you understand that question, and, two, is that your answer?

A Yes.

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Harryhausen - direct

Q The answer is in the affirmative to both questions, is that correct?

A To both questions?

Q Do you understand that question? The answer is yes, is that correct?

A Yes.

Q And the second question was: Is that your answer? The answer is yes, is that correct?

A Yes.

MR. MACKEY: I want to submit that it is illegal to try to limit the pleading that sets forth the ultimate issue as a matter of law to remarks pushed upon the witness by counsel.

MR. ELDRIDGE: Are you charging me with illegal activities?

MR. MACKEY: I am not charging you with illegal activities, I am charging you with confusing activities.

MR. ELDRIDGE: I would think the witness's last answer to my questions would resolve your contention of confusion.

MR. MACKEY: He doesn't know anything about the law of agency, or about any of this sort of thing.

MR. ELDRIDGE: I haven't asked him that, and I

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don't intend to go into that.

MR. MACKEY: That is why we say all the defendants.

MR. ELDRIDGE: Your remarks are noted.

BY MR. ELDRIDGE:

Q Mr. Harryhausen, have you now told us of all the written or oral communications which you, or your representative, had with any of the defendants, or their representatives, in this action relating to your film, Plaintiff's Exhibit 3-A for identification?

Of course, my question relates to prior to the commencement of this litigation.

A As far as I can recall.

Q Do you have any records or memoranda that would help refresh your recollection?

A No.

Q It is correct, is it not, that you nor any representative of yours ever dispatched a writing to any of the defendants in this action relating to Plaintiff's Exhibit 3-A for identification?

A Not that I know of.

Q Mr. Harryhausen, the exhibition of Plaintiff's Exhibit 3-A for identification to BBD&O, Y&R and three other advertising agencies, the identity of which you

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cannot recall, that was done by you in 1946 prior to your trip to California in March of that year, is that correct?

A Yes.

Q How long after your meeting with Mr. Cullen Landis, and the exhibition at Sarra, Inc., which you testified to?

A How long after?

Q Yes.

A It may have been three weeks.

Q Within a period of three weeks?

A Maybe three or four weeks. I am not certain.

Q Within a period of a month?

A Within a period of a month, yes.

Q Am I correct that you cannot recollect any of the specific dates, or the specific persons, to whom you showed that film in these various advertising agencies? Is that correct?

A Yes. I don't recall the names.

Q Would you tell us once again your purpose in seeing those agencies, and exhibiting your film to them?

A I was interested in getting commercial work at that time.

Q Did any of your meetings with any of these advertising agencies, and their representatives, culminate

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in your getting any work from them?

A No. Not right at that time. Television was still in its infancy, and I don't think there was too much advertising in that respect.

Q You mean television film commercials?

A Filming commercials, yes.

Q Did you, subsequent to that time in 1946, get work from those advertising agencies?

A No. Not direct work.

Q Indirect work?

A No.

Q Do you recall any of the conversations you had with any of those people at the agencies at the time you exhibited your film?

A No. They were all more or less general conversations.

Q Relating to your express purpose?

A Relating to my purpose, and what I can do.

Q Did you exchange any writings with any of those agencies, either prior to or subsequent to your visits for the purpose of soliciting work?

A I don't believe so.

Q Paragraph 2, if you will look at that, of your amended complaint, on lines seven and eight thereof, you refer to a disclosure of your idea or combination of ideas

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in the course of a confidential relationship?

A Yes.

Q Do you see that?

A Yes.

Q When did you enter into this confidential relationship with defendant American Tobacco Company?

MR. MACKEY: Do you want to know about the complaint, or when did he enter into a relationship?

MR. ELDRIDGE: The question is when did he enter into the alleged confidential relationship with the defendant American Tobacco Company.

Q Do you understand the question, Mr. Harryhausen?

A That would be with Mr. Freese.

Q That would be with Mr. Freese when?

A At my first meeting with him.

Q When you first met him?

A Yes.

Q Did you advise him that you were speaking to him in confidence?

A You mean verbally?

Q Yes, or in writing?

A I can't recall that I did, no.

Q When did you enter into this confidential relationship with Foote, Cone & Belding? Was that at the

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same time?

A At the same time.

Q In the same meeting?

A He represented Foote, Cone & Belding, of course.

Q You refer to the time when you spoke with Mr. Freese?

A Yes.

Q When did you enter into the confidential relationship with defendant Sarra, Inc., meaning the alleged confidential relationship?

A That would deal with when I went to his studio to show the film.

Q I was referring to the corporate defendant then, Mr. Harryhausen, Sarra, Inc.

A What is the difference between the two?

Q Sarra, Inc. is a corporation; Valentino Sarra is an individual, sir.

A (No response)

Q Do you understand the difference between a corporation and an individual?

A Yes.

Q When did you enter into the alleged confidential relationship with defendant Valentino Sarra, the individual?

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Harryhausen - direct

A When I showed the film to them.

Q Did you advise defendant Valentino Sarra that the relationship that you had with him at that time was confidential?

A Verbally?

Q Verbally or in writing?

A No, but I would assume that it was.

Q But you did not so advise him?

A No.

Q When did you enter into the alleged confidential relationship with Sarra, Inc.?

A At the same time. I don't know of any distinction.

Q Your conversations at that time with Sarra, Inc. were as you testified -- correct me if I am wrong -- with Cullen Landis, is that correct?

A Yes.

Q Did you advise Mr. Cullen Landis that the exhibition of your film, or the conversation you had with him, was in confidence?

A No.

Q Verbally or in writing?

A No.

Q Were you at all familiar with the costs of production of two-minute stop-motion television commer-

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cials in 1946, 1947 and 1948?

By that I mean animated commercials of that length, having a music sound track.

A I had heard of various costs, yes.

Q What had you heard?

A $50 a foot, $80 a foot, $25 a foot. It varied, depending on the subject.

Q Do you understand we are talking about animation by the technique of stop-motion photography?

A Yes.

Q When you gave your answers, $50, $80 and $25, were you referring to 16 mm. film or 35 mm. film?

A That would be in 16.

Q Independent of any employment you may have had with any entity, have you as an individual ever made a television film commercial utilizing stop-motion photography techniques?

A There is one I made for the race track that went on television, the Hollywood Race Track. And my educational films have been on television.

Q When I refer to a television film commercial, I refer to what would be a straight advertising message, such as you would find at a station break, and as a spot commercial.

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A No.

Q The hitch-hiker and cow-catcher, and so forth.

A Yes.

Q Other than the Hollywood Race Track matter, you have not made any such television film commercials?

A No.

Q Do you know if the Hollywood Race Track film was actually used as a television film commercial?

A No, I had no connection with it after it was disposed of.

Q It purported to advertise the race track?

A It showed how the dollar was split up that you invest at the race track.

Q Paragraph 5 of your complaint, Mr. Harryhausen, in the last two lines thereof, refers to the fact that you have been damaged in the sum of $500,000. Upon what facts do you base that allegation?

A Well, it created a basic idea, and it has been used a number of times over a period of ten years in various ways.

Q Your feeling is --

A I felt my creative idea was the imaginative core that all of this developed from, all the subsequent films developed from.

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Harryhausen - direct

Q You feel, do you, then, that if you had had the film work directly to you which you claim utilizes your basic idea, you would have netted the sum of $500,000 to date, is that correct?

A I could imagine that, yes.

Q That is the basis of that allegation, is it not?

A Yes.

MR. MACKEY: I don't think you let him state all his reasons for fixing the $500,000 as a reasonable value.

Q Do you have any other reasons, Mr. Harryhausen, for the computation of your damage in the sum of $500,000, other than what you just testified to?

A As an owner, I feel it was worth that.

Q As an owner of what?

A Of a product of the original basic creation.

Q Do you understand that when television film commercials are made by an independent producer that the independent producer retains ownership in the film?

A In some cases they are put on a commission basis.

Q Television advertising film commercials?

A On a residual, I understand.

Q On a residual for whom?

A For actors, for some cases for commercials.

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Q You didn't intend to act in the film commercials which you claim, did you?

A No.

I also read in 1956 the American Tobacco Company made one billion dollars profit, and I would think that --

Q Out of what? Out of their advertising?

A Their advertising would certainly contribute to that.

Q And out of the one billion dollars made by the American Tobacco Company, as you say, in 1956, you believe, because of your alleged damage, you are entitled to one-half a million dollars, is that correct?

MR. MACKEY: Not that year alone. He didn't limit himself to just that year.

THE WITNESS: It is an accumulation all the way up from the time it was first put out.

Q The billion-dollar figure you just gave us, where did you get that information?

A From the Wall Street --

MR. MACKEY: The Wall Street Journal, I believe it was.

Q Did you get it from Mr. Mackey, or do you read the Wall Street Journal?

A Once in a while I look at it.

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Harryhausen - direct

Q And you read it in the Wall Street Journal?

A Yes.

Q When?

A Last week. No, this week, I guess it was, since I have been here.

Q That was the net or gross monies received in 1956, do you refer to?

A Net.

Q Net profit?

A I believe it was net, yes.

Q Are you familiar, Mr. Harryhausen, with the percentage of profit a film producer makes out of the sale of a film wherein the charge is $25, $50 or $80 a foot?

A (No response)

Q I mean net profit to the film producer.

A It depends on who they are, and what overhead they have.

Q That is true. Have you been advised with respect to the prices which you quoted to us of the normal percentage of profit one might expect?

A No.

Q But you recognize that against the $25 a foot, $50 a foot, or $80 a foot, as you gave to us, there

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would be overhead factors that would diminish those figures?

A Yes.

Q In order to arrive at a net profit to the film producer, is that correct?

A That is correct.

Q You told us yesterday, Mr. Harryhausen, that films designated 9, 10, 12, Hit Parade 50 Opening, one Tareyton film commercial which you did not see the day before yesterday, the twirling in the Conga commercial, and a Pepsi-Cola commercial, were the films that had violated your basic creative ideas. That is correct, is it not?

A Yes.

Q What films of that group do you claim were made by Sarra, Inc.?

A 9 and 10.

Q Any others of that group?

A It doesn't say who made the Hit Parade opening. I imagine it must be Sarra. Is that correct?

Q I am asking you who you claim, which of the films you claim were made by Sarra, Inc.

A There is no indication here as to who made the Hit Parade opening.

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Q What others?

A The Hit Parade.

Q You claim it was made by Sarra, Inc.?

A I believe it is. Isn't it?

Q I am asking you.

MR. MACKEY: We took this from the minutes of Mr. Boor's examination.

MR. KLDRIDGE: I am asking for Mr. Harryhausen's knowledge with respect to a rather simple question.

A It includes the Hit Parade.

Q 1950 opening?

A Yes. The Conga. Number 22.

Q How about the Tareyton commercial, which you did not see?

A The Tareytown commercial, that I did not see.

Q How about the Pepsi-Cola commercial?

MR. MACKEY: We are not suing here for the Pepsi-Cola.

Q You don't claim any damage as a result of the Pepsi-Cola commercial to which you referred yesterday?

A That came out afterward.

Q After what?

A After the idea was started -- after the cigarettes had been on television.

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Q You mean that came out after 1948?

A That came out about 1950 or 1955.

Q And the use of that commercial did not cause you any damage?

MR. MACKEY: We are not asking for damage in this action because of Pepsi-Cola.

Q You haven't commenced a suit against Pepsi-Cola, have you, Mr. Harryhausen?

A No.

Q Have you commenced a suit against any other entity other than the defendants in this action for the alleged violation of your basic creative ideas?

A No.

Q What films of the group which you state allegedly violated your basic creative rights do you claim John Freese had anything to do with with respect to the creation, production or use of them? I will give you the numbers again, if you wish me to.

MR. MACKEY: Why not refer to Exhibit 4-A for identification and Exhibit 5-A for identification? That covers them all.

MR. ELDRIDGE: I am asking Mr. Harryhausen --

A It started with the first film that was made subsequent to mine.

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Q. I am asking you what films of the ones you have stated you find violate your basic creative ideas do you claim defendant John Freese had anything to do with with respect to their creation, their production, or their use?

A That would depend on -- it would start originally with the first one.

Q Number 9?

A Yes.

Q Any others?

A They are all hinged on the basic pattern of the first one, after Number 9 is made then it all goes on from the pattern of that, the pattern of the first one.

Q To your knowledge, did John Freese have anything to do with the creation, production or use of the Conga television commercial?

A I have no information as to that.

Q Did he have anything to do with the creation, production or use of the Pepsi-Cola commercial?

A I have no information as to that.

Q Did he have anything to do with the creation, production or use of the Tareyton commercial, which you did not see the day before yesterday?

A Not that I know of.

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Q Did he have anything to do with the Hit Parade Opening 1950, with respect to its creation, production or use?

A (No response)

Q I am only asking you of your knowledge.

A Well, I have no idea, no way of knowing.

Q You have no knowledge, then?

A No.

Q Did the defendant John Freese have anything to do with respect to the creation, production or use of film Number 12?

MR. MACKEY: He didn't have anything to do with anything so far as the mechanical preparation of the film is concerned. He did the whole thing in so far as taking Mr. Harryhausen's idea is concerned.

Q Mr. Harryhausen, did defendant John Freese, to your knowledge, have anything to do with respect to the creation, production or the use of film Number 12, which you saw the day before yesterday?

A I have no knowledge of that.

Q I would ask you the same question with respect to film Number 10.

MR. MACKEY: I object to it on the ground it is

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a theoretical answer that you want to get.

MR. ELDRIDGE: There is nothing theoretical about what I am asking Mr. Harryhausen.

MR. MACKEY: It is not a question of fact. If you mean did he go down to the laboratory and prepare the film, or anything like that, we say he didn't, except through agents, like Sarra. And he was an agent of the American Tobacco Company when he got the idea from Mr. Harryhausen. Everything after that is based on Freese and the American Tobacco. That is our theory.

MR. ELDRIDGE: For what period of time do you claim that Mr. Freese was acting as an employee of Foote, Cone & Belding and the agent of the American Tobacco Company in this lawsuit?

MR. MACKEY: The only relevant time is in 1947, when he took the creative idea, and the American Tobacco has utilized it ever since down to date. It all traces back to Freese. That is our position.

Whether Batten, Barton, or anyone else is their present agent, it doesn't matter.

MR. ELDRIDGE: Let's go back to my question. You have made your statement for the record. I think I understand the language you use. Needless

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to say, I think your legal theory is completely incorrect. But the court will determine that.

MR. MACKEY: If you agreed with it, we wouldn't be here.

MR. KLDRIDGE: I hope we can accept that.

BY MR. KLDRIDGE:

Q With respect to film Number 10, Mr. Harryhausen, what do you claim defendant John Freese had to do with the creation, production or use of that particular film?

A He was at Foote, Cone & Belding at the time it was made.

Q At the time it was made?

A Yes.

Q Is your answer the same with respect to film Number 9?

A Yes.

Q And answers you gave in response to my question relating to defendant John Freese, would they be the same with respect to Foote, Cone & Belding, if I had posed the same questions and substituted the name Foote,Cone & Belding for John Freese?

A I don't know.

Q I am only asking you with respect to your personal knowledge. If you don't understand my question,

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I will be happy to go through each film again for you. Do you understand my question?

A Would you please repeat it?

Q All right. We will take them one by one.

What do you claim defendant Foote, Cone & Belding, Inc. had to do with respect to the creation, production or use of the Conga commercial?

A It was produced by HBD&O, apparently.

Q I am saying: What is your personal knowledge with respect to creation, production or use of the Conga film by Foote, Cone & Belding?

A I have no personal knowledge.

Q You have no such personal knowledge?

A It all starts right at the beginning, with the first commercial.

Q I am referring to a specific film, Mr. Harryhausen, known as the Conga commercial. I believe we have called it that in the course of questions and answers here. Do you understand which film I am referring to?

A Yes, I do.

Q Do you have any knowledge about whether Foote, Cone & Belding was at the time that film was produced representing the American Tobacco Company as its advertising

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agency?

A I believe they changed hands at that time.

Q Prior to the production, creation of the Conga commercial, is that your information?

A Yes.

Q And that at the time of the creation and production of that commercial, and its subsequent use, that they were not the advertising agency for American Tobacco Company?

A It all starts with the first one, that is what I don't understand.

MR. ELDRIDGE: I have to move to strike your answer.

Q Do you understand my question?

MR. MACKEY: I object to it. He gave you an answer he considers correct, and I don't see why he has to answer another question.

Q I will ask you the question again, Mr. Harryhausen, and if you don't understand it, you tell me. Do you have any personal knowledge that defendant Foote, Cone & Belding, Inc. had anything to do with the creation, production or use of the television film commercial known as the Conga?

A No, I have no personal knowledge.

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Harryhausen - direct

MR. MACKEY: He is confusing the mechanical work with the legal theory, and that is where it is all being bollixed up.

BY MR. ELDRIDGE:

Q Do you understand what the words creation of a film mean, and production of a film, and use of a film, you understand those terms, do you not?

A Yes.

Q I would like to ask you the same question with respect to the Hit Parade 1950 Opening. The question relates to your personal knowledge of Foote, Cone & Belding's activities with respect to the creation, production or use of that particular film.

A This is all a legal theory to me. I don't know quite what it -- it all hinges on the fact that the first one was produced, and then the subsequent ones were used based on that.

Q I understand -- correct me if I am wrong -- that you claim that Foote, Cone & Belding, Inc. had something to do with the creation, production and subsequent use of No. 9, is that correct?

MR. MACKEY: I would like to suggest an adjournment. I don't like to delay my lunch hour over the noontime.

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Harryhausen - direct

MR. ELDRIDGE: Let me finish this. I only have three more questions on three more numbers.

THE WITNESS: I would like to go off the record.

MR. ELDRIDGE: I will go off the record with you.

(Discussion off the record)

BY MR. ELDRIDGE:

Q Mr. Harryhausen, do you know, of your own knowledge, whether or not Foote, Cone & Belding, Inc. was acting as the advertising agency for the American Tobacco Company when film Number 12 was made?

MR. MACKEY: I object to that as immaterial.

MR. ELDRIDGE: Your objection is noted.

A All I can say is I have no knowledge.

Q I ask you the same question with respect to film Number 10.

A I have no way of tracing it.

Q You have no knowledge, is that correct?

A No.

Q I ask you the same question -- and if you don't understand the question you tell me -- with respect to Number 9.

A That was one, was Foote, Cone & Belding.

Q You know of your own personal knowledge they were

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Harryhausen - direct

acting for American Tobacco Company at the time that film was made?

THE WITNESS: Can we go off the record? I would like to confer with my attorney.

MR. ELDRIDGE: Please do so.

(Discussion off the record)

Q Do you understand my question, Mr. Harryhausen, and have it in mind?

A Yes, I do.

Q What is your answer?

A I don't know.

Q That is with respect to all of the films which you claim utilized your basic creative ideas -- you don't know whether Foote, Cone & Belding was acting for the American Tobacco Company at the time those films were made, or at the time those films were used on television; of your own personal knowledge you have no such information, do you?

A No.

MR. ELDRIDGE: Do you want to break for lunch, Mr. Mackey?

MR. MACKEY: Yes, I do.

(Whereupon, at 12:30 p.m., there was a luncheon recess.)

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AFTERNOON SESSION

1:45 P. M.

R A Y H A R R Y H A U S E N, resumed the stand, was examined and testified further as follows:

DIRECT EXAMINATION (CONT'D) BY MR. ELDRIDGE:

Q Mr. Harryhausen, in making the film, Plaintiff's Exhibit 3-A for identification, did you select the music for the film prior to arranging for the action of the objects?

A Yes, I did.

Q In other words, it is customary in stop-motion photography with inanimate objects to have the action of the object conform to the rhythm or beat of the music?

A Yes. You usually have a standard beat and various pieces of music will fit the same beat.

Q The music more or less dictates the action?

A Yes. It runs in 8s, 16s, and fairly well standardized -- it doesn't dictate the action so much as it dictates when to accent a beat.

Q I wasn't thinking of the action from the point of view of sequence of events, I was thinking from the point of view of the actual action you cause the three-dimensional object to do or engage in.

A It doesn't dictate the actual action, no, not in that

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respect. It dictates the beats you want to have a certain portion of it.

Q You try to have the action of the object conform to the beat?

A Yes.

Q That is the common way of doing it, is it not?

A Yes.

Q Mr. Harryhausen, from early 1945 up to date, have you now told us all the oral or written communications you have had with any of the defendants or their representatives?

A Yes, I have.

Q As far as your knowledge is concerned, you have told us of all the oral or written communications with any of the defendants or their representatives that any representative of yours had?

A Yes.

Q Did you, Mr. Harryhausen, or any representative of yours, have any oral or written communications with any of the following entities, or their employees or representatives: M. H. Hackett Company?

A (No response)

Q I direct all of these questions with respect to the film which we are discussing.

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Harryhausen - direct

A Miss Knight may have, I am not certain. I couldn't be sure of it.

Q Is this a surmise or guess on your part?

A A guess on my part.

Q Do you have some actual knowledge?

A I have no knowledge at the moment.

Q Prior to executing your deposition, Mr. Harryhausen, should Miss Knight have had some communication with M. H. Hackett & Company, or its representatives or employees, would you so indicate in your deposition, and if there was an oral or written communication, if it be the former, would you advise with whom it was, and the substance thereof; if it is in writing, would you supply the written communication, the original thereof, to the extent you have an original, to your attorney for the purpose of production and discovery by the defendants?

A I will see if I have it.

MR. ELDRIDGE: Is it agreeable, Mr. Mackey?

MR. MACKEY: Yes.

Q Do you have in mind my question with respect to M. H. Hackett & Company?

A Yes.

Q I ask you the same question with regard to Lord & Thomas.

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A I have no knowledge of Lord & Thomas.

Q Of any oral or written communication relating to the film with Lord & Thomas or any representative or employee of theirs?

A No.

Q Jam Handy organization?

A No.

Q Electra Films?

A No.

Q BBD&O?

A I am not certain.

Q Is that because you lack personal knowledge?

A I lack personal knowledge on that.

Q Do you know of your own knowledge, Mr. Harryhausen, whether or not Foote, Cone & Belding, or the American Tobacco Company, had any business relationships with Sarra, Inc., prior to 1946?

A Of my own knowledge?

Q Yes.

A No.

Q I ask you the same question, and place the date prior to 1947.

A Will you repeat the question, please?

Q My question is: Do you know whether or not

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Foote, Cone & Belding, or the American Tobacco Company, had any business relationships with Sarra, Inc. prior to January 1, 1947?

A No, I have no knowledge of that.

Q I would ask you the same question, and place the date prior to January 1, 1948.

A The films here were made in that respect, I believe.

Q What film are you referring to?

A 9 and 10.

Q Were made prior to January 1, 1948?

A (No response)

Q Is that something within your personal knowledge, Mr. Harryhausen?

A No.

Q You have no personal knowledge of any such business relationship prior to January 1, 1948, have you?

A No.

Q Do you have any personal knowledge of any business relationship that Foote, Cone & Belding, or American Tobacco Company, has had with Sarra, Inc. subsequent to January 1, 1948, and the date of the commencement of this litigation?

A I knew that Sarra had made these films for Foote, Cone & Belding for the American Tobacco Company.

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Harryhausen - direct

Q You say "these films." Which films do you refer to?

A Essentially 9 and 10.

Q 9 and 10?

A Yes.

Q What was your source of that knowledge?

A I don't recall. I heard it from someone at the time. I am not certain of the source of my knowledge. It may have been from a magazine, it may have been from an oral report. I am not certain.

Q You learned that information at the time the films were made, is that right, or were being made?

A Yes.

Q And the business relationship you speak of is one relating to the manufacture of films 9 and 10?

A Essentially, yes.

Q What else besides that?

A Those were the two.

Q In your meeting with Mr. Freese, in 1946, Mr. Harryhausen, did you advise Mr. Freese of your background and experience with George Pal?

A I believe I did.

Q What was the purpose of advising Mr. Freese of that fact?

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Harryhausen - direct

A I believe he asked me about my experience, and my background.

Q In stop-motion photography?

A In stop-motion photography, yes.

Q Did you advise him of your background beyond that of your relationship with George Pal?

A Beyond that?

Q Yes.

A I probably did, yes.

Q What did you tell him?

A I don't recall. I probably told him of my own experiments in animation photography.

Q You say you probably did. Does that mean you are just guessing at that?

A I am not certain. I am just guessing. I must have told him about my experience.

Q You don't have a specific recollection?

A I don't have a specific recollection.

Q What was the advertising agency involved in the deal you had with the Hollywood Race Track for the creation of that film in the fall of 1947?

A It was with an independent producer. It wasn't for an agency.

Q You mean you received the work from an independent

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film producer?

A Yes.

Q Prior to commencing work on that film, did you have a story conference with the independent producer?

A Yes, I recall I did.

Q Would you identify the independent producer?

A I think his name was Hoyt.

Q Was the independent producer an individual?

A He was an individual, yes.

Q He subcontracted the work to you?

A He was producing live action, and he turned over this animated sequence to me.

Q Which represented business he had secured from the client, Hollywood Race Track?

A Yes.

Q Mr. Harryhausen, are there any facts that deterred you from commencement of this litigation to the year 1956?

A In what way do you mean, any facts?

Q Was there anything that deterred you from commencing this litigation against these defendants until the date in 1956 when it was commenced?

A I wasn't familiar with legal matters at that time, and I had been in and out of the country working on my own

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projects, and subsequently on television I saw the Tareyton package, and some of the others that seemed to continue to duplicate my original movements.

Q You mean your pattern of movements?

A My pattern of movements.

Q When you refer to the Tareyton one, you refer to the one you did not see the other day, is that correct?

A Yes.

Q Do you have a recollection of the movement within that film, that Tareyton film, the sequence of events that took place in that film commercial?

A As I recall it, it took place quite similar to what you term Number 12.

Q Number 12 relating to a Lucky Strike?

A Relating to a Lucky Strike.

Q Can you give us the dates, Mr. Harryhausen, when you were without the United States during the period January 1, 1948, utnil the commencement of this suit?

A In 1956, I was out, I think it was from August to October.

Q Were you outside the United States at any other period during the period January 1, 1948, to the commencement of this suit?

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A Yes. I was outside during 1950, I believe it was.

Q During what period of time?

A It was either 1949 or 1950. It was about December and continued for a month.

Q A month?

A A month, I believe.

Q Could it have been the month of December, 1949, and the month of January, 1950?

A As I recall it, yes.

Q Either one of those periods, but it was a 30-day period?

A Approximately a 30-day period.

Q Where were you?

A I took a boat trip through the Panama Canal.

Q On business?

A Yes.

Q Was the period in 1956 that you told us about also for business?

A Yes, it was.

Q What other times were you outside the United States during the period January 1, 1948, to the commencement of this suit, other than those you have told us?

A As I recall, those are the only two dates.

Q The reason you did not commence suit until late

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in 1956, meaning this lawsuit, was because of the times you were outside of the country as just related to us, and your lack of knowledge with respect to legal matters, is that right?

A Yes.

Q Any other reason?

A No.

Q Do you recall yesterday I asked you if you were able to describe Mr. Valentino Sarra?

A Yes.

Q Could you describe Mr. Cullen Landis for us?

A I would say he is a man of average build. As I recall, he had light hair. I had heard he had been an actor at one time. I don't recall his description other than that.

Q You met him only on one occasion, isn't that correct?

A As far as I can recall, it was one occasion. There may have been a second occasion, but they were both very brief.

Q What is your best recollection of the second occasion, if any?

A I think it was one occasion.

Q You have no recollection, actually, of the second

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occasion?

A I don't know. It may have been after the showing, but I am confused if there was a second.

Q When you state you met him on one occasion, you are referring to the meeting you testified about at Sarra, Inc. at which you exhibited Plaintiff's Exhibit 3-A for identification, is that correct?

A That is correct, yes.

Q Mr. Harryhausen, do you have attorneys in California?

A Yes, I do.

Q For how long a period have you had attorneys in California?

A Since the start of this litigation.

Q Prior to that time, you had no association with attorneys in California?

A I had association with a contract once, a good many years ago, in 1949 or 1950, I guess it was.

Q Did you discuss this matter with that attorney?

A No, I didn't.

Q Let me ask you something, Mr. Harryhausen: Is there any difference in production or camera technique in the making of a stop-motion film for theatre exhibition as opposed to making it for television exhibition?

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A You mean photographically speaking, the manner in which it is photographed?

Q That is correct.

A Basically, no.

Q Is there any physical difference between 16 mm. film that is used for television or is used for screen exhibition?

A There is now, yes, I understand.

Q By now, you mean today?

A Today, I believe.

Q The 16 mm. film is physically different if it is to be used for television exhibition as opposed to being used for a screen exhibition?

A Only in regard to the motion, that I know of.

Q Creative techniques for both would be identical, though?

A Yes.

Q Plaintiff's Exhibit 1-A, B and C represent a story board?

A Yes.

Q Did you at any time show that story board to any of the defendants in this action?

A No.

Q Mr. Harryhausen, this lawsuit was commenced on

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November 30, 1956, which is the date appearing on the summons of the original complaint filed in this action. Is that correct?

MR. MACKEY: If you say so.

Q Prior to that time, Mr. Harryhausen, had you forgotten that you had seen the SALESMAN'S MOVIE in 1946?

A Yes, I had. I didn't remember until I received the description, and then that verified it.

Q You subsequently saw it the day before yesterday?

A I saw it the day before yesterday.

Q Mr. Harryhausen, based upon this testimony here given, would you like to voluntarily discontinue this lawsuit against the defendants without the imposition of costs?

A I would like to wait to answer that question until I have a chance to read this over.

Q All right. And then prior to the execution of your deposition, before a notary public in California, where I assume it will be executed, will you so indicate your answer to that question?

A Would you please repeat the question?

MR. ELDRIDGE: Would you read it back.

MR. MACKEY: I think that is a question for him to take up with his attorney.

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THE WITNESS: Yes.

(The question was read)

BY MR. ELDRIDGE:

Q The answer is you will so answer that prior to the execution of your testimony before a notary public?

A Yes.

MR. ELDRIDGE: I have no further questions.

MR. WHEELER: Off the record.

(Discussion off the record)

MR. WHEELER: This is an examination pursuant to notice given by myself as attorney for Sarra, Inc. and Valentino Sarra, the date of the notice being March 12, 1957, and the notice providing that the examination will take place immediately following the completion by Coudert Brothers, pursuant to their notice, they representing the other defendants in the case.

Mr. Mackey, in view of the very full and complete examination conducted by Mr. Eldridge, which covered a great many of the items and matters upon which I would ordinarily examine, would you stipulate that if I had asked the same questions, or if I were to ask the same questions that Mr. Eldridge asked, the witness would give the identical answers?

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MR. MACKEY: Yes.

MR. ELDRIDGE: Is that agreeable to you, Mr. Harryhausen?

THE WITNESS: Yes.

MR. WHEELER: There are a few matters I want to go over.

MR. MACKEY: In that connection, the objections I made to Mr. Eldridge's questions shall also apply so far as they are deemed your questions.

MR. WHEELER: I so stipulate.

MR. ELDRIDGE: I suppose by that same token, Mr. Wheeler would want to note that the motions made by myself during the course of the examination relating to the objections of yours, or responses of the witness, be deemed his motions for the purpose of his examination.

MR. WHEELER: That is right.

EXAMINATION BY MR. WHEELER:

Q You were discharged from the service, as I understand it, sometime at the beginning of 1946?

A Yes, February 7, to be specific.

Q During the latter part of your service, were you stationed in Long Island City?

A Yes, I was.

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Q While you were there, did you have occasion to meet Captain Cullen Landis?

A No, I don't believe I met him.

Q Had you heard of him?

A The name sounds familiar, but I remember I never met him at the post. The first time I met him was in civilian clothes, I know that.

Q Where was that first time you met him?

A At the Valentino Sarra organization.

Q I would like you to go over again for me the conversation that you had with Mr. Landis on that occasion. That is, the day you visited the Sarra Company offices.

A I don't recall too much of the conversation, as I said before. First, I showed him the film, and we ran the film several times. And then we discussed possibilities of making commercials through the Sarra organization.

Q When you say discussed the possibility of making commercials, you are speaking now of other commercials, am I correct?

A That came into the general discussion. We started out with the cigarette commercial, because that was the immediate showing, that was the subject at hand.

Q Was there anybody else present when you talked to Mr. Landis?

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Harryhausen - direct

A Not that I recall.

Q I believe your testimony was that you had no other conversations with any other person representing Sarra, Inc. that day, other than possible introductions, or greetings, and such as that, am I correct in that assumption?

A Yes, that is correct.

Q In so far as Valentino Sarra is concerned, you saw him only for a few seconds while this film was being run, is that your testimony?

A Yes.

Q You had no talk with him?

A Yes, I said I had a brief conversation with him.

Q What was the nature of that conversation?

A He commented on my film, very favorably, and of course our introductions, and that is about the extent.

Q That is all?

A Yes.

Q You didn't discuss the making of any commercials with him?

A No, I did not.

Q Mr. Landis did not keep your film that day, did he?

A No.

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Q He returned it to you immediately?

A After he finished projecting it.

Q And you took it with you when you left?

A Yes.

Q I think you said that you were there, you thought, some place in the neighborhood of possibly a half-hour or so?

A Yes, I imagine it would be about that.

Q Do you recall whether or not you telephoned or communicated with Mr. Landis in any way before you went over to see him?

A I cannot recall exactly.

Q To your knowledge, did Mr. Freese make an appointment for you?

A He may have. I have no recollection of the way I contacted him. I know I contacted him, and we ran the picture.

Q Did you ever see Landis on any other occasion, except that occasion which you have described, in the Sarra Corporation office?

A No.

Q You haven't seen him from that day to this?

A No.

Q And you have had no communication with him in

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writing? Or anybody else in the Sarra Company?

A No.

MR. WHEELER: I think those are all the questions I want to ask, Mr. Mackey.

MR. MACKEY: I have no questions.

MR. ELDRIDGE: Note that the examination is closed this date at this time.

(Whereupon, at 2:45 p. m., the examination was closed.)

Sworn to before me this)
day of , 1957.)

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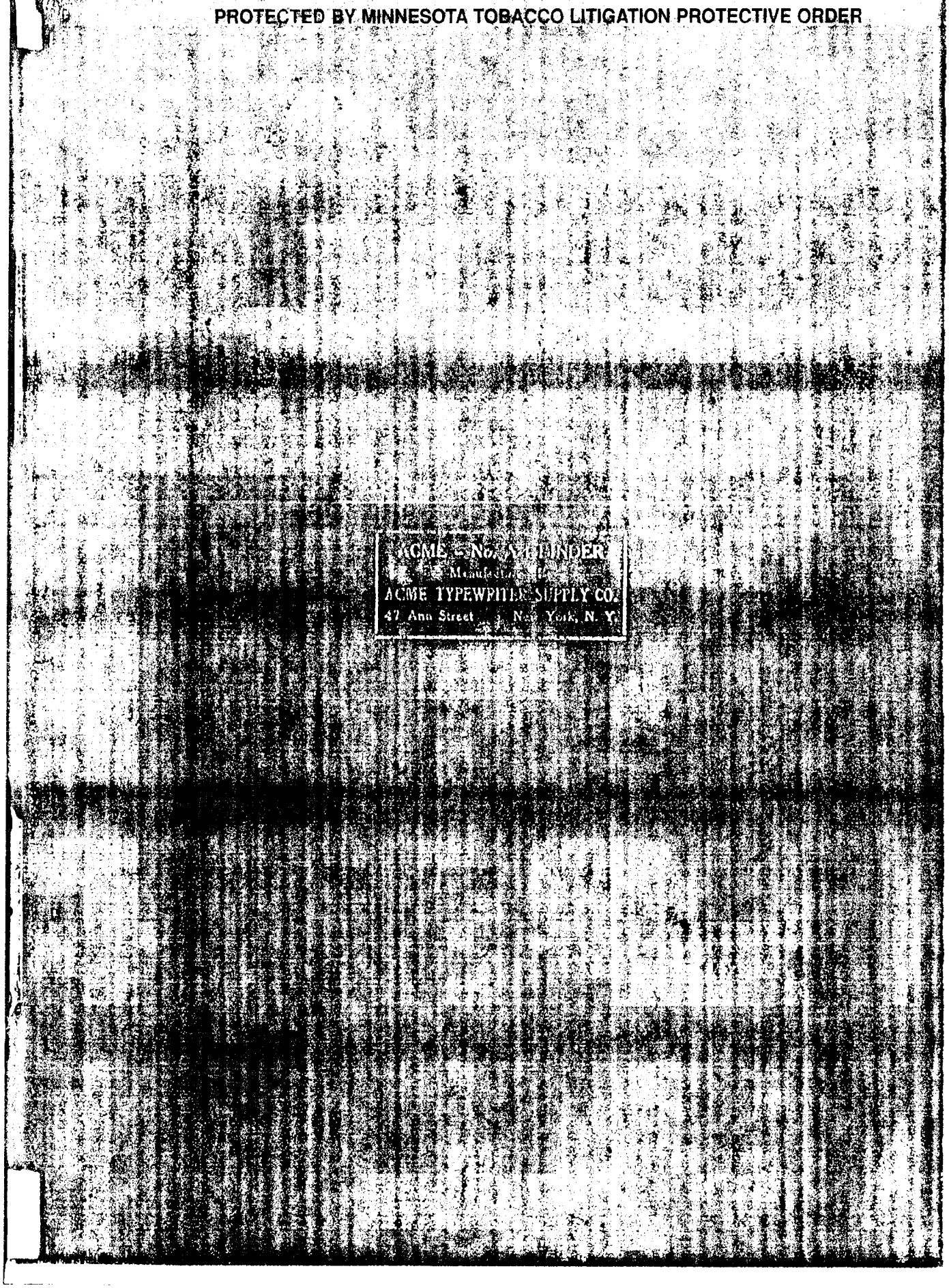

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